Oct 14 1876
submitted
3-217

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 652.

CHARLES MORGAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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FILED JULY 1, 1876.

Submission set aside
Oct 28 1876
Argued
Jan Feb

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No. 652.

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1 State of Louisiana, superior district court for the parish of Orleans.

PROCEEDINGS IN SUIT OF STATE OF LOUISIANA VS. CHARLES MORGAN, NO. 631.—FILED IN THE EIGHTH DISTRICT COURT FOR THE PARISH OF ORLEANS.

Petition.—Filed 2d June, 1871.

To the honorable the judge of the eighth district court for the parish of Orleans:

The petition of the State of Louisiana respectfully represents:

That Charles Morgan, residing in the city of New Orleans, is legally indebted to said State of Louisiana in the sum of two thousand nine hundred ($2,900.00) dollars, being for State tax for the year 1870, on Morgan's Louisiana and Texas Railroad.

2 That said Charles Morgan has neglected and refused to pay the same as required by law.

Petitioner further represents that a privilege is granted by law on the property of the said defendant for the payment thereof.

Wherefore petitioner prays that said Charles Morgan be cited to appear and answer this demand, as required by law, and after legal proceedings had, that there be judgment in favor of the State of Louisiana, and against said Charles Morgan, in the sum of two thousand nine hundred ($2,900.00) dollars, with five per cent. attorneys' fees, and with privilege on the property of defendant, according to law, with costs of suit, and for general relief in the premises.

(Signed) S. BELDEN, *Attorney-General.*
(Signed) HORNOR AND BENEDICT,
Of Counsel.

Citation.—Issued 2d June, 1871.

Eighth district court for the parish of Orleans, the State of Louisiana.

3 STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 631.

To Mr. Charles Morgan, N. O., La.:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of the said court, the 2nd day of June, in the year of our Lord 1871.

[SEAL.] (Signed) ROBERT LYNNE,
Deputy Clerk.

Sheriff's return on citation.—Filed June 10th, 1871.

Received June 5th, 1871, and on the eighth day same month and year served a true copy of the within citation and accompanying petition on Mr. Charles Morgan, through his agent, Charles A. Whitney, in person, who accepted the same.

Returned June 9th, 1871.

(Signed) F. PFISTER,
D'y Sheriff.

Sheriff's fees, $2.00.

4 *Answer.—Filed 21st June*, 1871.

Eighth district court, parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 631.

Now comes into this honorable court Charles Morgan, defendant herein, who, for answer to plaintiff's petition, denies all and singular the allegations therein contained, except in so far as may be hereinafter admitted.

And defendant says that the legislature of the State of Louisiana by an act entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 22, 1853, being No. 149 of said statutes, created the said company a body corporate and empowered them to construct a railroad from Algiers, Louisiana, to the Sabine River in said State, being the boundary-line between the States of Texas and Louisiana, by way of Berwicks Bay, Washington, La., etc., and fixing the capital stock of the company at $6,000,000; and the second section of said act declares "that the capital stock of said company shall be exempt from taxation, and that its works, fixtures,
5 workshops, warehouse, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of the State."

And defendant represents that the said road is not yet completed within the limits of the State; that its present terminus is at Brashear City, on Berwicks Bay, eighty miles distant from Algiers; that respondent, who is now owner of the road, has since his purchase taken all necessary steps for extending the road under said act, and has expended large sums for that purpose.

Respondent further says that by act passed by the said legislature of Louisiana, approved April 30, 1853, being act No. 345, and by act approved March 15, 1855, being No. 163, other rights, privileges, and franchises were granted to the said corporation; that acting under and by virtue of these statutes, and in consideration of the franchises granted and promised, the railroad was built by said company to Berwicks Bay, about eighty miles (80) as hereinbefore stated.

And further, respondent says that by act of the Louisiana legislature, approved March 20, 1856, being number 194, it was specially pro-
6 vided that any railroad created by the laws of Louisiana might borrow such sums of money as might be required for construction or repairs, and for that purpose might issue bonds, or their obligation secured by mortgage upon the franchises and other property of the company and payable at such times and places as the president and directors might designate.

And respondent further says that on or about the 17th day of March, 1859, the said New Orleans, Opelousas and Great Western Railroad Company in order to obtain means for the further construction of their railroad, acting under and by virtue of said act of 1856, and of other statutes, issued their bonds for two millions of dollars, ($2,000,000,) to bear interest at the rate of eight per centum per annum, which interest was made payable semi-annually in coupons attached to said bonds, secured by a first mortgage on the said road, appurtenances, equipments, rights, and franchises.

Respondent further says that the said railroad company, having for

several years, failed to pay said interest-coupons, execution process was issued in the United States circuit court 5th circuit and district of Louisiana, in the suit of Charles Morgan versus said railroad com-
7 pany, being suit No. 5788, of the docket of said court, and after legal proceedings the said property mortgaged as aforesaid, including the railroad, the works, buildings, franchises, privileges, and all things pertaining to said railroad, was seized by the United States marshal, and, on the 25th day of May, 1869, at public auction, and after the observance of the proper and legal formalities was adjudicated to Charles Morgan, the defendant in this suit.

And defendant alleges that all statutes of the State, and especially that under which the State claims in this suit, so far as they affect this defendant, or attempt to set aside or annul the said act approved April 22nd, 1853, being No. 149 of the statutes of said year, exempting the said railroad, capital, works, & etc., from taxation, and which act was a contract between the State and said company, are null and void, because they are in conflict with and contravene those provisions in the constitution of the State of Louisiana of 1852, of 1864, and of 1868, which declare that no law impairing the obligations of contracts shall be passed, nor vested rights be diverted, and of other provisions of said constitution, and because they violate the several provisions of the Constitution of the United States, and among others the first clause
8 of section ten of the first article, which prohibits any State from passing any law "impairing the obligations of contracts."

Wherefore defendant asks for judgment in his favor, and for costs, and for all general and equitable relief.

(Signed) LEOVY & MONROE,
Attys. for Defendant.

Note by clerk.

The foregoing record of proceedings had in suit 631, eighth district court, was transferred and filed on the docket of superior district court for the parish of Orleans May 9th, 1873, and numbered 2947 thereof, and continued on page of this transcript.

State of Louisiana, superior district court for the parish of Orleans.

PROCEEDINGS IN THE CASE OF STATE OF LOUISIANA VS. CHARLES MORGAN.—No. 571.

9 *Petition.—Filed Jan'y 14th*, 1873.

To the honorable the judge of the superior district court in and for the parish of Orleans, in the State of Louisiana:

The petition of the State of Louisiana, by A. P. Field, attorney-general thereof, respectfully represents that Charles Morgan, residing in the city of New Orleans, Louisiana, is legally indebted to the State of Louisiana in the sum of fifteen thousand four hundred and fifty-eight dollars and fifty cents, being for State taxes for the year 1871, on property assessed as per bill filed; also, tax-collector's bill for notice, &c., two dollars and twenty-five cents, in the fifth district of the city of New Orleans, besides five per cent. fees for collecting the same, with all penalties fixed by law and costs of suit.

That said Charles Morgan has neglected and refused to pay the same, although due notice has been given as required by law.

Petitioner prays that said Charles Morgan be cited to appear and answer the demand herein contained as the law requires, and, after legal proceedings had, that there be judgment in favor of the State of
10 Louisiana, and against the defendant herein, for the amount of fifteen thousand four hundred and sixty dollars and seventy five cents, with such penalty as may be fixed by law for non-payment, and five per cent. on the amount of judgment as compensation for collecting the same, to be taxed as costs, with recognition of privilege as provided by law, and for costs of suit and general relief in the premises.

(Signed) A. P. FIELD,
Attorney-General.

Tax receipt.—Filed Jan'y 14th, 1873.

THE STATE OF LOUISIANA,
Parish of Orleans:

STATE TAXES FOR 1871.

JUNE *7th,* 1872.

Received of Mr. Charles Morgan the sum of fifteen thousand and four hundred and fifty-eight dollars and fifty cents, amount of State taxes for the year 1871, on the property, etc., described on the reverse hereof, in accordance with law.

(Signed) C. L. SWEET,
$15,458.50. *Tax Collector Parish of Orleans.*

(Endorsed:) Parish of Orleans.

Real estate	400,000
Live-stock; vehicles	
Stock or interest in steamboats	19,000
Capital employed in trade and commerce	300,000

Money used in trade and commerce, capital stock of all banks or corporations, household goods and mechanics' tools exceeding $500:

11 Real estate	400,000
Rolling-stock on railroad	300,000
Steamer Lucretia	12,000
" Porter	7,000
" Morganville	
	$719,000

Citation.—Issued 14th Jan'y, 1873.

State of Louisiana, superior district court for the parish of Orleans, in the city of New Orleans.

STATE OF LOUISIANA *vs.* CHARLES MORGAN. } Citation. No. 571.

Mr. Charles Morgan:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your

answer to the same in the office of the clerk of the superior district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, the 14th day of January, in the year of our Lord 1873.

(Signed) JOHN FAHY,
D'y Clerk.

Sheriff's return on citation.

Received January 17th 1873, and on the 24th day of January, 1873, served a copy of the within citation and accompanying petition
12 on Charles Morgan, defendant herein, through his agents, Whitney & Co., by personal service on Chas. A. Whitney, esq., a member of said firm, who accepted service of the same.

Returned same day.

(Signed) FRANK PFISTER,
D'y Sheriff.

Sh'ff's fees, $2.00.

Exception.—Filed 5th Feb'y, 1873.

Superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 571.

Charles Morgan, a citizen of the State of New York, defendent herein, excepts to answering the petition and claim in this suit, for the reason that there is no sufficient description of the property upon which the tax is alleged to be due to enable him to answer advisedly, nor is the cause of action sufficiently set forth. Defendant requires, to enable him to properly defend himself, descriptions of the real estate referred to; statement of amount for which each piece of property was assessed; where situated; when asssessed, and by whom.

Wherefore defendant prays that he be excused from answering
13 until the necessary information is furnished, and he asks that this exception be maintained with costs.

(Signed) LEOVY & MONROE,
Attys. for Defdt.

Supplemental & amended petition.—Filed Feb'y 15th, 1875.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 571.

To the honorable the judge of the superior court for the parish of Orleans:

The amended and supplemental petition of the State of Louisiana respectfully represents:

That the property upon which tax is herein alleged to be due is described as follows: Real estate comprised between Thayer avenue and Varrett avenue, and river front to line of Jefferson Parish, about forty (40) arpents, more or less, in parish of Orleans, right bank, and other

property as described on the reverse of the tax-bill, which is filed in this suit.

Wherefore petitioner prays that this amended and supple-
14 mental petition be filed, that defendant be cited, that judgment be had as originally prayed for, and for general relief.

(Signed) A. P. FIELD,
Attorney-General.

Order.

Let this supplemental petition be filed.

(Signed) JACOB HAWKINS, *Judge.*

Citation, (on supp'l petition.)—Issued Feb'y 15th, 1873.

State of Louisiana, superior district court for the parish of Orleans, in the city of New Orleans.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } Citation. No. 571.

Mr. Charles Morgan, N. O., La.:

You are hereby summoned to comply with the demand contained in the supplemental and amended petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the superior district court for the parish of Orleans in
15 ten days after the service hereof.

Witness, the honorable Jacob Hawkins, judge of the said court, the 15th day of February, in the year of our Lord eighteen hundred and seventy-three.

[SEAL.] (Signed) JOSHUA CORPREW,
D'y Clerk.

Sheriff's return on foregoing citation.—Filed February 24th, 1873.

Received Feb'y 15th, 1873, and on the seventeenth day of the same month and year served copy of the within citation and accompanying supplemental and amended petition on Charles Morgan, defendant herein, by personal service on A. G. Hutchinson, a member of the firm of Charles A. Whitney & Co., the agents of said Morgan.

Ret. same day.

(Signed) PH. LAEOSTE,
D'y Sheriff.

Answer.—Filed 27th June, 1873.

16 Superior district court, parish of Orleans, La.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 571.

Now comes into this honorable court Charles Morgan, a resident of the city of New York, in the State of New York, made defendant herein, who, for answer to plaintiff's petition, denies all and singular the alle-

gations therein contained, except in so far as may be hereinafter specially admitted.

Defendant alleges that the legislature of the State of Louisiana, by an act entitled "An act to incorporate the New Orleans, Opelousas, and Great Western Railroad Company," approved April 22nd, 1853, being No. 149 of said statutes, created the said company a body corporate, and empowered them to construct a railroad from Algiers to the Sabine River, by way of Berwicks Bay, Washington, etc.; that the capital stock was fixed at six millions of dollars, and that the second section of said act declares "that the capital stock of said company shall be exempt from taxation, and that its works, fixtures, workshops,
17 warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of this State;" that said road is not yet completed within the limits of this State, its present terminus being Brashear City, on Berwicks Bay, though respondent since his purchase has taken all necessary steps for that purpose.

Defendant further shows that by an act passed by said legislature of Louisiana, approved April 30th, 1853, being No. 345, and by an act approved March 15th, 1855, No. 163, other privileges, rights, and franchises were granted to said corporation; and that acting under and by virtue of these statutes, and in consideration of the franchises granted and promised, the said railroad was built as far as Berwicks Bay, in the State of Louisiana, a distance of about eighty miles.

And defendant further alleges that by an act of the legislature of Louisiana, approved March 20th, 1856, being No. 194, it was specially provided that any railroad company created by the laws of this State might borrow such sums of money as might be required for con-
18 struction or repairs, and for that purpose might issue their bonds or their obligations secured by mortgage upon the franchises and other property of the company, and payable at such times and places as the president and directors might designate.

And respondent further alleges that on or about the 17th day of March, 1859, said New Orleans, Opelousas, and Great Western Railroad Company, in order to obtain means for the further construction of their railroad, and acting under and by virtue of said act of 1856, and of other statutes, issued bonds for $2,000,000, to bear eight per cent. per annum interest; which interest was made payable semi-annually in coupons attached to said bonds, secured by a first mortgage on the said road, and its appurtenances, equipments, rights, and franchises. Defendant further alleges that the said company having failed for several years to pay said interest-coupons, executory process was issued from the United States circuit court for the district of Louisiana, in the suit of Charles Morgan versus said company, being numbered
19 5788 of the docket of said court; that after due and legal proceedings, the said property mortgaged as aforesaid was seized, and on the 25th day of May, 1869, the said road and its rights, privileges, franchises, appurtenances, etc., were adjudicated to Charles Morgan, your respondent, at public sale by the United States marshall, after the observance of all legal forms; and your respondent was placed in possession of the said road, etc., and has remained in possession and in the enjoyment of the said road, appurtenances, franchises, ever since said purchase.

And defendant further says that the real estate, the rolling-stock, and the steamers Lucretia and Porter, (used as ferry-boats,) named in the petition in this suit, all belong to and are part of the said railroad, and are especially exempt from taxation by said act of 1853.

And defendant further says that he is a citizen of New York, and resides in said State, and that he pays in said State taxes on [can't read original] liable to taxation and on all personal property liable to taxation.

And defendant says that the apprais'ment is excessive, and that he opposed the assessment on all the grounds herein set forth, and
20 in due time and according to law.

And defendant further says that all the statutes of the State, and specially that under which plaintiff claims to collect taxes in this suit, so far as they affect the defendant, or attempt to set aside or annul the said act approved April 22d, 1853, exempting the railroad, etc., from taxation, are null and void, because they are conflict and contravene the provisions of the State constitutions of 1852, of 1864, and of 1868, which declare that no law impairing the obligation of contracts shall be passed, no vested rights divested, etc.; and because they violate the first clause of section ten of article first of the Constitution of the United States, which prohibits any State from passing any law impairing the obligations of contracts; and because the said statutes, so far as it is attempted to apply them to defendant, are in contravention of other provisions of the United States and State's constitutions.

Wherefore defendant prays for judgment in his favor, and for costs, and for all general and equitable relief.

(Signed) LEOVY & MONROE,
Attys. for Defdt.

21 *Continuance.—Minutes March 11th, 1873.*

TUESDAY, *March 11th*, 1873.

Present, the honorable Jacob Hawkins, judge.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 571.

This case, fixed for this day for trial, was ordered to be continued to be called.

Amended answer.—Filed March 17th, 1873.

Superior district court for the parish of Orleans, La.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 571.

And now into this honorable court comes Charles Morgan, a resident of the city of New York, in the State of New York, the defendant in the said above-entitled cause, and by way of amendment to his answer heretofore filed therein, (leave of court having been first had and
22 obtained,) for further answer to the said original petition and supplemental petition filed in the said cause, says:

That the said act of the legislature of Louisiana, approved April 22nd, 1853, No. 149 of the statutes of the said year 1853, and entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," and the said act of the legislature of Louisiana, approved April 30th, 1853, being number 345 of the statutes of this year,

and entitled "An act supplementary to 'An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company.'" which was accepted by the said New Orleans, Opelousas and Great Western Railroad Company, and under the authority of which the first grand division of the said railroad from the city of New Orleans to Berwicks Bay was built and constructed and put in operation, constituted a valid and subsisting contract between the said New Orleans, Opelousas and Great Western Railroad Company, by which the said State of Louisiana bound and obligated itself to relinquish and surrender the right and power of taxation as to the property of the said New Orleans, Opelousas and Great Western Railroad Company while the said railroad was
23 in course of construction, and for ten years after the completion of the said railroad as authorized to be constructed and operated under the said acts, and that the said right of the said New Orleans, Opelousas and Great Western Railroad Company to the said relinquishment and surrender of the said right and power of taxation, or to the property of the said New Orleans, Opelousas and Great Western Railroad Company as aforesaid, was and is protected by section ten of the first article of the Constitution of the United States, which prohibits any State from passing any law impairing the obligations of contracts, and by sections of the constitution of the State of Louisiana adopted in 1852, 1864, and 1868, heretofore named in the answer to the petition and supplemental petition filed in this suit, and cannot be affected or impaired by subsequent legislation of the State of Louisiana or by the action of any officer or person acting in any way or manner under the power or authority of the said State of Louisiana.

And defendant further says that by the adjudication to him as aforesaid according to law in virtue of the proceedings in the said suit numbered 5788 of the said circuit court of the United States for the dis-
24 trict of Louisiana which was made to him on the 25th day of May, 1869, he became the owner and possessor of the said railroad of the said New Orleans, Opelousas and Great Western Railroad Company, together with the road-beds of the main tracks and branches and depots and lands specially appertaining thereto and especially of the said real estate described in the said supplemental petition as comprised "between Thayer avenue and Varrett avenue and river front" and of all the rolling stock, &c., &c., and of all the franchises belonging and appertaining to the same, as will be seen by reference to the marshal's sale made in pursuance of said adjudication—a duly-certified copy of which will be offered in evidence, and is hereto annexed and marked "A;" and that as owner and possessor of the said property and franchises, he was and is now in law entitled to maintain, run, and operate the said railroad for the transportation of freight and passengers, and to locate, construct, maintain, and operate the said railroad for the transportation of freight and passengers and to locate, construct, maintain, and operate a ferry or ferries, from the depot property appertaining to the said railroad on the right bank of the Mississippi River to one or more points within the corporate limits of the said city of New Orleans, on the opposite
25 side of the said river, and to have and to enjoy all the rights, benefits, and advantages, and all the franchises, immunities, and exemptions granted to the said New Orleans, Opelousas and Great Western Railroad Company by the said acts, and especially by the exemption of the property belonging to and making a part of the said railroad and constituting a portion of the same or thereto appertaining and made use of for operating said railroad, in his capacity of successor of the said New Orleans, Opelousas and Great Western Railroad Com-

pany, by a particular title, under and in virtue of the said adjudication made to him, as aforesaid, as fully as the said New Orleans, Opelousas and Great Western Railroad Company could or would have done.

And defendant further says that the said New Orleans, Opelousas and Great Western Railroad Company had begun to extend the said railroad as contemplated by the said acts, by beginning the work of constructing the said projected railroad from the said Berwicks Bay to Vermillionville, when the said work was interrupted by the breaking out of the late unhappy war, in the year 1861; that the business of the said company over the completed portion of the said road was broken up by the
26 said war; that the said road and the *and the* rolling stock thereon, and various other property appertaining to the same, was greatly delapidated, and during the said war many of the bridges and buildings were destroyed by overpowering physical force, and much of the rolling stock and other property were carried off during the said war, to the great loss and injury of the said company. Defendant is informed and believes that the operation of the said causes alone prevented the completion of the said road to Vermillionville and to the Sabine River, many years ago, and produced the embarrassments in its financial condition which rendered it unable to pay the interest accruing on its mortgage-bonds and led to the judicial sale of the same, at which defendant became the purchaser of the said portion extending from the said city of New Orleans to Berwicks Bay. And defendant further says that from the time he became the purchaser of the said property, on the said 23rd of May, 1869, he has been desirous of having the said works completed, as originally projected by the said railroad company, and that he and other persons associated themselves and applied to the legislature of the State of Louisiana, at the session of the same held in
27 the year 1870, to incorporate the Berwicks Bay and Texas Railroad Company, for the construction of a railroad beginning at the western terminus in Brashear City of the railroad constructed by the said New Orleans, Opelousas and Great Western Railroad Company, from Algiers to Brashear, and to extend thence by the most eligible route to the State of Texas, with a branch or branches to form connections with the district of country on Red River; and that defendant in his personal and individual capacity addressed a letter to the senate and house of representatives of Louisiana, to accompany the said application, in which he promised and bound himself, if the legislature would grant the application and enact the bill then submitted into a law, to take all the stock in said corporation not subscribed for by third persons, and to guarantee the entire completion of the said proposed railroad within the period of three years from the date of the passage of the said bill, as stipulated and provided for in sections seven and eight of said bill, which said application was made to the said legislature on or about the 25th day of January, 1870, as will appear by reference to the printed copy of the said letter accompanying it,
28 which is herewith filed. That a day or two afterwards defendant addressed another letter to the said legislature, in which he proposed to give his personal bond or obligation to pay the sum of five hundred thousand dollars ($500,000) as a penalty if the said road was not completed as stipulated in the said bill, if it was enacted into an act; and that the legislature of the said State of Louisiana neglected to grant the said application and to enact the said bill into a law, and in preference thereto passed the act entitled "An act relative to the New Orleans, Mobile and Chattanooga Railroad Company," etc., etc., being No. 31 of the acts of 1870, approved on the 25th day of February, 1870.

And defendant further says that at a sheriff's sale, made under execution issued out of the seventh district court in and for the parish of Orleans, in the suits numbered 2248, 2249, 2250, 2251; and out of the fourth district court of the parish of Orleans in the suits numbers 23289 and 23288, of the docket of said courts, respectively, defendant became purchaser of the said portion of the said railroad which was to have been constructed by the said New Orleans, Opelousas and
29 Great Western Railroad Company, which had been graded as aforesaid, from the said Berwicks Bay towards the west; and of the remainder of the franchise conferred on the said company by the State of Louisiana, under and by virtue of the said acts of the said legislature, as will be seen by reference to a copy of the said sheriff's sale, which will be produced on the trial of this cause.

And defendant further says that afterwards, there having been various contests and difficulties between the said New Orleans, Mobile and Chattanooga Railroad Company, now known as the New Orleans, Mobile and Texas Railroad Company, the defendant entered into an agreement with the said company, on the 12th day of December, 1871, in which, among other things, he transferred to the said company the franchises, rights, and privileges, then owned by defendant, for the construction and maintenance of the road proposed to be constructed by the said New Orleans, Opelousas and Great Western Railroad Company, as required by defendant, under and by virtue of the sheriff's sale made to him as aforesaid, on the said day of , 1870, and obtained from the said New Orleans, Mobile and Texas Railroad
30 Company an obligation by which said company promised and bound itself to construct and complete such railroad from Brashear City, notwithstanding, to connect with its own main line at or near Vermillionville, by the time it shall complete its main line of said railroad from Vermillionville to Houston, Texas, as will more fully appear from a copy of the said agreement of the 12th of December, 1871, which will be produced on the trial of this cause.

And defendant further says that since his purchase of the said property he has expended large sums of money on the said road with a view to the completion of the same at as early a day as practicable.

And he asks for judgment in his favor, and for costs.

(Signed) MILES TAYLOR AND
LEOVY AND MOORE,
For Defendant.

Order, (on foregoing supp'l answer.)

Let the amended answer be filed.
New Orleans, March 17th, 1873
(Signed) JACOB HAWKINS, *Judge.*

31 *Continuance.—Minutes, March* 27, 1873.

THURSDAY, *March* 27, 1873.

Present, the honorable Jacob Hawkins, judge.

STATE OF LOUISIANA
vs. } No. 571.
CHARLES MORGAN.

This case, fixed for this day for trial, was ordered to be continued to be called.

Continuance.—May 9th, 1873.

FRIDAY, *May 9th*, 1873.

Present, the honorable Jacob Hawkins, judge.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } Nos. 2947 & 571.

These cases, fixed for this day, were ordered to be continued to be called with preference.

Motion for commis'ion.—Filed May 12th, 1873.

32 Superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } Nos. 2947 & 571.

On motion of Leovy and Monroe, of counsel for defendant herein, and on representing to the court that A. C. Hutchinson, who resides in this parish, is a witness for defendant, and that the testimony of said Hutchinson is necessary and material to the defence of the above-entitled suits, and on further representing that the said Hutchinson is about to depart from this State:

It is ordered that a commission issue directing the clerk of this court to take the testimony of the said A. C. Hutchinson, in the clerk's office of this honorable court, upon Tuesday, May 13th, 1873, at 11 o'clock a. m., and that plaintiff be notified thereof, through A. P. Field, esq., attorney-general.

Affidavit annexed to foregoing motion.

F. A. MONROE, being sworn, says:

That Charles Morgan, the defendant in the above-entitled suit,
33 is now absent from this State; that affiant is one of the attorneys of record representing said Charles Morgan; that the testimony of A. C. Hutchinson is material to the defence of said suits, and that said A. C. Hutchinson is on the eve of departing from this State, to the best of affiant's knowledge and belief.

(Signed) F. A. MONROE.

Sworn to and subscribed this 12th day of May, 1873.

(Signed) JOSHUA CORPREW,
D'y Clerk.

Sheriff's return on foregoing motion for commission.—Filed May 13, 1873.

Received, May 12, 1873, and on the same day and year served a copy of said rule on A. P. Field, attorney-general, in person.

(Signed) J. GOLDING,
D'y Sheriff.

Testimony.—Filed May 13, 1873.

34 Superior district court.

STATE OF LOUISIANA *vs.* CHARLES MORGAN. } Nos. 571, 631, 2947, & 4207.

Testimony taken on behalf of defendant in the clerk's office, May 13th, 1873.

Present, F. C. Remick, esq., for State of Louisiana; H. J. Leovy, esq., for defendant. Testimony of A. C. Hutchinson, reported by C. W. Colton, phonographer, No. 16 Carondelet street.

ALEXANDER C. HUTCHINSON sworn and examined on behalf of defendant.

By Mr. LEOVY:

Q. You are agent for Charles Morgan?
A. Yes, sir.
Q. How long have you been employed with Mr. Morgan?
A. Twenty-five years.
Q. How long have you been his agent?
A. Well, five years. I am a member of the firm of Charles A. Whitney & Co.
Q. Are you going away this evening?
A. Yes, sir.
Q. Where?
A. To California.
Q. Do you know anything about the purchase by Mr. Morgan of the Opelousas Railroad?

35 A. Yes, sir; I know he purchased it at marshal's sale.
Q. About when?
A. About the thirty-first day of July, 1869.
Q. Do you know what he purchased?
A. He purchased the railroad from New Orleans to Brashear, and all its franchises. Afterwards he purchased the franchises beyond Brashear, and the graded way, at sheriff's sale.
Q. Did he buy everything belonging to the road?
A. Everything connected with it and everything belonging to it.
Q. He has been in possession ever since?
A. He has been in possession ever since, undisputed.
Q. What has he done in way of improving the road since he purchased it? I mean in the way of its extension.
A. Well, he paid two millions and fifty thousand dollars for the road, and has spent nearly two millions five hundred thousand dollars on the road and its appendages.
Q. Has he changed the grade? (guage.)
A. He has changed the guage of it.
Q. With what view?
A. With the view for the extension of the road beyond Brashear to Texas.
Q. When was that done?

36 A. In the summer of 1872. He entered into an agreement with the New Orleans, Mobile and Texas Railroad, by which he sold them the franchises and graded way beyond Brashear, and invested a large amount of money in their stock.

Q. What did they agree to do?

A. They agreed to extend the road to the city of Houston within a time limited by their charter.

Q. What did this change in the guage consist of?

A. It consisted of changing from five feet six to four feet eight and a half, the object of which was to meet the same guage that the New Orleans, Mobile and Texas Railroad were constructing on the west side of Brashear or Berwicks Bay, that being the State guage of Texas.

Q. What has Mr. Morgan done, with the view of extending this road, since he purchased it?

A. Soon after he became the possessor of it he applied to the legislature for a charter to extend the road to Sabine and the Red River country without asking any subsidies or State aid, offering to complete it in three years, and offering a bond of five hundred thousand dollars, to be forfeited in case of failure. The only consideration asked was that the State should not grant similar
37 privileges or charters to another corporation, and give them State aid. The legislature never acted upon that application. He has entered into an arrangement with several large capitalists in New York, represented by Mr. Kennedy, of New York, by which they were to endeavor to obtain a charter from the State of Louisiana to build the road from Berwicks Bay; he (Mr. Morgan) agreeing, with that aim in view, to take a large interest. Mr. Kennedy, under this arrangement applied to the legislature for this charter and privilege, but was unable to pass it. The charter or the bill of The New Orleans, Mobile and Texas Railroad, giving them large subsidies in bonds, was passed in place of it. This was previous to the arrangement made with the New Orleans, Mobile and Texas Railroad to extend the road. Then Mr. Morgan endeavored to form a company under the general railroad law of the State, and organized, on the twelfth day of November, 1869, a company for the purpose of building the road, he proposing to furnish two millions of dollars provided the balance of the amount, estimated at two millions, was furnished by the people of New Orleans and the surrounding country.

38 Q. So far as you know, what has been Mr. Morgan's intention in reference to extending the road ever since he purchased it?

A. I have known that Mr. Morgan's aim has always been with a view to see the road extended to Sabine. Before the war he loaned a large amount of money to the New Orleans, Opelousas and Great Western Railroad, taking bonds in exchange, which money was to be used in building the road beyond Brashear, and which was expended or which was part of the money expended on the grade of eighty miles, which they completed before the war beyond Brashear. He is about instituting suit now for the purpose of compelling the New Orleans, Mobile and Texas Railroad Company to either build the road as per the agreement made with the company, or to compel them to return the franchises and the graded way, in order that he may be enabled to construct it himself.

Q. In all conversations with you since this purchase, is not the impression left upon your mind that he intended to complete the road?

A. I have never heard him express any other intention since I have known him.

39 Q. Now, Mr. Hutchinson, there are two or three of these suits in which assessments have been made on this property over the river. Do you remember what steps were taken with a view to reduc-

ing the assessments each year? There is one for 1869, one for 1870, and one for 1871.

A. No, sir; I don't know. That matter was placed in the hands of Mr. Pandely; he attended to that. Mr. Morgan instructed Mr. Pandely to protest against the assessments, and also to see that they were valued reasonably and right. I, myself, this last year, in 1872 and 1871, entered a protest myself at the office of the State assessors, on the day they closed the assessment books, a copy of which protest I will produce.

By Mr. REMICK:

Q. What month was that; do you remember?

A. I can't tell you, sir.

Q. Was it within the time the law directed?

A. It was previous to the time the law directed the books to be closed. The books were kept open until three o'clock in the afternoon.

Q. Do you remember whether it was in the month of August?

40 A. It was in the summer months; no objection, however, was made as to that; at five minutes to three o'clock, which was the hour on which the books were closed, no assessments had been made on the railroad property, and I had been to the State assessor's office frequently, and had been told that they had not concluded as to the amount. At five minutes to three no assessments had been made; that was the last day; it was in 1871. I had a blank protest in my hand, and just before three o'clock they entered the amount in pencil, and I filled up the amount in my protest and handed it in.

Q. It was assessed then while you were there?

A. No; I stepped out in the hall, and came back immediately afterwards. When I came back the book was handed to me with the assessment entered in pencil.

Q. Did you object to that assessment?

A. I entered my protest.

Q. Did you object to it as being improper or as being excessive?

A. I made the protest in writing and that covered it.

Q. Was the ground of that protest that you were not liable to be taxed, or that the assessment was more than it ought to be?

41 A. The ground of the protest was that the tax was illegal; that the road was exempt from taxation by the clause in the act, which was quoted. In some of them objections were made to the amount, but Mr. Pandely attended to that portion of it.

By Mr. LEOVY:

Q. This last piece of property is that piece of real estate over there?

A. We have no property over in Algiers, except that which is used immediately by the Opelousas Railroad. It was bought for that purpose. The property on which this tax is now attempted to be collected belongs to and is used by the railroad.

Q. Do you know anything about letters Mr. Morgan addressed to the legislature in reference to the bill you refer to?

A. Yes, sir; a letter in which he made this proposition: I would state there are two small steamboats used for the transportation of our cars and passengers, and we use a ferry-boat for the railroad purposes, and for nothing else.

Cross-examined by Mr. REMICK.

42 Q. Was there a land-grant by the United States Government to the Opelousas Railroad which Mr. Morgan claimed to have purchased as one of the franchises of that road?

A. Yes, sir.

Q. What has become of that grant? Has it reverted to the United States Government?

A. Yes, sir; it has reverted to the United States Government by an act of Congress.

Q. Do you remember when that act was passed?

A. No, sir; I cannot tell you.

Q. Can you state upon what ground the act was passed, taking it back from the road?

A. Well, there were no grounds stated.

Q. Was it on account of the fact that the road was not completed?

A. Not that I know of. I have never heard that. I was in Washington the winter the act was passed.

Q. You say that Mr. Morgan has parted with the ownership in the graded way beyond Brashear City?

A. Yes, sir; all that part on the other side of Berwicks Bay, by the agreement with the New Orleans, Mobile, and Texas Railroad Company on condition that they built the road. Mr. Morgan holds these
43 gentlemen personally responsible, as the arrangement was made between him and them on their personal representations, and his expectation is to get that property back, because they are responsible men—all of them.

Q. Then he has no expectation, under the contract that he has made, that the road can be extended to Texas at all?

A. It depends entirely upon the result of this sale. The parties who buy the property may conclude that their best policy would be to carry out this contract with Mr. Morgan.

Q. Well, so far as you say, the visits that you made to the assessor's office were to protest against any assessment at all, and not to reduce the assessments that were made?

A. I never made any application for a reduction of the assessments on the roll.

Q. You objected to its being assessed at all?

A. The objection that I made was that.

Re-direct by Mr. LEOVY:

Q. Do you know what Mr. Pandely did?

A. Mr. Pandely, I know, objected to the amount of the assessments, for it was left to him. The details were carried out by him.

44 Q. You stated in the beginning, or I so understood, that if the New Orleans, Mobile and Texas Railroad Company did not extend their road, according to the contract, then Mr. Morgan will get it back again and complete the road himself?

A. That is his aim. That is what he is trying to do now.

Sworn and subscribed to before me this May 13th, 1873.

JOSHUA CORPREW,
D'y Clerk.

Copy of protest, (referred to in testimony.)—Filed May 13th, 1873.

A. C. HUTCHINSON, being duly sworn, deposes and says:

That he is the agent of Charles Morgan, who resides and is now in the city of New York; that he pays his taxes on his personal and movable property in that city; that, so far as taxes are concerned, claimed on the property owned by him known as the New Orleans and Opelousas Rail-

road, lately belonging to the New Orleans, Opelousas and Great
45 Western Railroad Company, this deponent says that, by section second of the statutes of 1853, being No. 149, all of the said property is exempt from taxation "for ten years after the completion of the road within the limits of the State," and that, by virtue of a writ issued by the honorable the judge of the circuit court for the district of Louisiana, all the property of the road as far as Berwicks Bay, with its franchises, rights, and privileges, were sold by the United States marshall and purchased by Charles Morgan; and that, in consequence thereof, the said property is exempt from taxation.

And deponent further protests against the assessments made because they are excessive; but deponent in no manner waives the rights of Charles Morgan under the said statutes of 1853, (No. 149,) and the sale to him by the United States marshall, and he protests for his said principal in the action of the assessors in changing the amounts assessed against him so far as to increase the assessments after the completion of the rolls and notice given to the public.

(Signed) A. C. HUTCHINSON.

Sworn to and subscribed before me Sept. 27th, 1870.

(Signed) A. SHELLEY,
Second Justice Peace.

46 (Endorsed:)

Originally served by me in the court-room of the council or parish hall, Villere street, Algiers, at 9.05 a. m., Sept. 29th, 1870, on M. O. Pilman, State assessor, and M. E. Brunet, assistant assessor, comprising two of the three members of the board of State assessors for the 5th district. The paper was read by both Mr. Pilman and Mr. Brunet. Mr. Pilman admitted that the assessment had been increased after the rolls had been advertised open for the examination of the public. He stated that he would make the return of the protest attached to his rolls.

RICHARD J. EVANS,
Assist. Sup'd't.

State assessment of Algiers. Copy of protest, sworn to Sept. 27th 1870. Filed May 13th, 1873.

(Signed) J. CORPREW,
D'y Clerk.

Motion for commission to take testimony of G. W. R. Bayley.—Filed May 17th, 1873.

Superior district court, p'h of Orleans.

STATE OF LOUISIANA } No. 571.
vs. }
CHARLES MORGAN. } " 2947.

47 On motion of Leovy and Monroe, of counsel for defendant in the above-entitled suit, and on representing that the testimony of G. W. R. Bayley, a witness for the defendant, residing in New Orleans, is material to the defence of the above-entitled suits, and on further representing that the said Bayley is on the eve of departing from the city and State, and it is therefore necessary that a commission should issue for the purpose of taking his testimony, and on further considering the annexed affidavit—

It is ordered that a commission issue directed to the clerk of this court, authorizing and instructing him to take the testimony of the said G. W. R. Bayley, in the office of the said clerk, upon Monday, the 19th day of May, inst., at 11 o'clock a. m.; and

It is further ordered that the State of Louisiana be notified, through A. P. Field, attorney-general, to be present and propound such cross-interrogatories to said witness as to said plaintiff may seem fit.

Affidavit annexed to foregoing motion for commission.—Filed May 17th, 1873.

48 F. A. MONROE, being sworn, says that he is one of the attorneys of record of the defendant in the above suit; that said defendant is now absent from the State; that affiant is informed and believes that G. W. R. Bayley is a material witness for the defence of the said suits, and that said Bayley is about leaving the State, and that a commission is therefore necessary to take his testimony.

(Signed) F. A. MONROE.

Sworn to and subscribed before me this seventeenth day of May, 1873.

(Signed) GEO. W. FLYNN,
D'y Clerk.

Notice to take testimony of G. W. R. Bayley.—Issued May 17th, 1873.

NOTICE.

State of Louisiana, superior district court for the parish of Orleans.

NEW ORLEANS, *May* 17, 1873.

STATE OF LOUISIANA } No. 571.
vs. } " 2947.
CHARLES MORGAN.

To A. P. FIELD, Esq., Attorney-General of Louisiana:

49 SIR: Please to take notice that the testimony of G. W. R. Bayley will be taken in the clerk's office in the above-entitled case, on Monday, the 19th day of May, 1872, at 11 o'clock a. m.

[SEAL.] (Signed) JOSHUA CORPREW,
Deputy Clerk.

Sheriff's return on foregoing notice, &c.—Filed May 19th, 1873.

Received May 17th, 1873, and on the 17th day of same month and year, served a copy of within notice to take testimony on A. P. Field, attorney-general, in person.

Ret. same day.

(Signed) HENRY BENIT,
D'y Sheriff.

Sh'ff's fees, 50c.

Sheriff's return on motion for commission.

Received May 17th, 1873, and on the same day, month, and year, served copy of within rule on A. P. Field, attorney-general, in person.

Ret. same day.

(Signed) HENRY BENIT,
D'y Sheriff.

Continuance.—Minutes, May 23, 1873.

50 FRIDAY, *May 23rd*, 1873.

Present, the honorable Jacob Hawkins, judge.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No'. 571, 2947.

These cases, fixed for this day for trial, were ordered to be continued till Friday next, the 30th inst.

Order of court.—Minutes May 29th, 1873.

THURSDAY, *May 29th*, 1873.

Present, the honorable Jacob Hawkins, judge.

STATE OF LOUISIANA
vs.
SUNDRY TAX DELINQUENTS.

On motion of F. C. Remick, appearing for A. P. Field, attorney-general, it is ordered that all the cases fixed for to-morrow, wherein the State of Louisiana is interested, be continued to Tuesday next, the 3rd of June, 1873.

51 TRANSCRIPT OF CASES NOS. 571 AND 2947, CONSOLIDATED BY AGREEMENT OF JUNE 3RD, 1873, HEREWITH COPIED.

Testimony taken in open court.—Filed June 3rd, 1873.

Superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } 571, 2947, consolidated.

Testimony taken in open court June 3rd, 1873.

It is agreed that these cases be tried as one suit; that the evidence used in one suit shall be also filed and used in the other.

It is admitted that the assessment of the description of the property, as set forth in original and supplemental petitions, are correct transcripts from the assessment-rolls of 6th district, and shall be used in evidence as such.

Defendant offers Mr. Morgan's title to the road to Brashear, being an act of sale, sold by U. S. marshall.

Also, Mr. Morgan's title to the road from Brashear, being an act of sale by the sheriff, marked

52 Also mortgage act by New Orleans, Opelousas and Great Western Railroad Company to Edmund J. Forstall, marked "C."

Also testimony of Mr. Hutchinson, together with protest attached, now filed and marked "D."

Also acts of 1853, No. 149, approved 22d April, and amendment to said act of 1853, page 328; act of March 30, 1856, p. 205.

Also the transcript of record of suit No. 5788, docket of the United

States circuit court, which is filed in a case pending in late eighth district court, No. 345. In case of appeal, it is agreed that petition and order of court therein and writ of seizure and sale, and marshal's return thereon, only shall be copied in the transcript.

C. A. WHITNEY, sworn for defendant, says:

I am the agent of Charles Morgan here. I am of firm of Charles A. Whitney & Co.; have been so acting for six and a half years—ever since the purchase of railroad to Brashear. I know that Mr. Morgan purchased the road at a marshal's sale, and subsequently at a sheriff's sale. I have read the testimony of Mr. Hutchinson, taken in this case. Up to the first of January last Mr. Morgan expended
53 about two and one-half millions of dollars in sidings, in rebuilding of bridges, new ties and new iron, and building a branch of fifteen miles, and inaugurating every facilities for crossing the Mississippi River, and an extension of the track about a mile and a quarter in the city of New Orleans, erecting depots, & etc., in changing the guage of the road from five feet six inches to four feet eight and a half inches. The change was made for the purpose of making it conform to the guage of the Texas Railroad, and to the road to be built on the other side of Brashear. The improvements necessary at Brashear, erecting of walls and depots, tracks and side-tracks, all this was done entirely in reference to the extension of the road beyond Brashear. My relations with Mr. Morgan were of a domestic and business matter. I am a son-in-law of Mr. Morgan. My relations with him afforded me the amplest opportunities of ascertaining his intentions. I know of my own knowledge that since Mr. Morgan became the owner of the completed portion beyond Brashear, his mind and all his energy
54 has been devoted to the road; he purchased the road on the 25th May, 1869. Immediately after the purchase he addressed a communication to the public in the city papers, expressing his earnest desire to see the road completed to Texas, and offered to furnish one-half of the capital necessary to build it. The result of that communication was the organization of the Berwicks Bay and Texas Railroad Company.

Act of sale by sheriff.—Offered in evidence by defendant June 3rd, 1873.

April 22nd, 1870.—Sale by the sheriff of the parish of Orleans to Charles Morgan of real estate.

Deed	$100 00
Recording deed in mortgage-office, parish of Jefferson	
Recording deed in conveyance-office, parish of Jefferson	" 30 00
Recording deed in mortgage-office, parish of Orleans	
Recording deed in conveyance-office, parish of Orleans	" 30 00
Recording deed in clerk's office fourth district court	" 50 00
Recording deed in clerk's office seventh court	" 50 00
Total	$260 00

55 (First page, T. L. M.) Whereas I, Thomas L. Maxwell, sheriff of the parish of Orleans, by virtue of eight writs of fiera facias to me directed respectively by the honorable the seventh and fourth district courts for the parish of Orleans at the suit *at the suits* of Samuel Engler versus New Orleans, Opelousas and Great Western Railroad Company; Charles B. Singleton versus the Same; Miles Taylor versus

Same; Same versus Same; Charles Morgan versus Same; Same versus Same; numbers 2194, 2201, 2248, 2249, 2250, and 2251 of the docket of the seventh district court for the parish of Orleans, and Jules A. Blanc versus The New Orleans, Opelousas and Great Western Railroad Company; Same versus Same; numbers 23287 and 23288 of the docket of the fourth district court for the parish of Orleans, after having fulfilled and complied with all the previous legal requisites, did seize the following-described property, to wit:

1st. The franchises of the New Orleans, Opelousas and Great Western Railroad Company granted by the State of Louisiana to the
56 said company, and giving it the right as set forth in its charter and act of incorporation to construct, maintain, and run and operate a railroad from the present terminus of the railroad constructed by said company from the town of Algiers, on the opposite bank of the Mississippi River, from the city of New Orleans to the city of Brashear or Berwicks Bay; that is to say, the franchises to construct, maintain, run, and operate a railroad from said terminus at Brashear or Berwicks Bay, to or near Washington, on the Courtableau, in the parish of St. Landry, and thence to some point on the Sabine River, the boundary-line between Louisiana and Texas: and,

2nd. The rights of way and the lands for depots, stations, and for the erection of buildings and works necessary for the use of a railroad, which have been acquired by the New Orleans, Opelousas and Great Western Railroad Company for the construction of the said railroad, and for running the same, together with the embankments thrown up, the grading done, and all other works of every kind and description whatsoever, made or begun by the said company, on the route located by the said company for the construction of the railroad which
57 the said company was or is authorized and empowered by the State of Louisiana to con (marginal note, second page. (S'g'd) T. L. M.) struct, maintain, and operate as aforesaid; which said embankments and grading and other works extend from a point on Berwicks Bay, in the parish of St. Mary, through the western part of said parish, and through the parishes of Iberia and La Fayette, and into the parish of St. Landry, being a distance of about eighty miles, more or less.

3rd. Thirty-six squares of ground situated in the town of Brooklyn, near Gretna, between the properties of V. Labarre and Marcy & Salter, in the parish of Jefferson, right bank, said squares being designated as squares numbers eight, ten, fifteen, eighteen, nineteen, twenty-three, twenty-four, twenty-eight, thirty-one, thirty-three, thirty-four, thirty-five, thirty-six, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, and sixty-one, on a plan drawn by J. A. d'Hemecourt, surveyor, and deposited in the office of the sheriff of the parish of Orleans, said squares being bounded and measuring as follows:

58 Square number eight, bounded by First, Second, and Monroe streets and Jefferson avenue, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Monroe street and Jefferson avenue by two hundred and twenty-two (222) feet seven (7) inches front on First and Second streets.

Square number ten, bounded by Second, Third, and Monroe streets, and property of Marcy and Salter, having three hundred and two (302) feet four (4) inches and eight lines front on Monroe street, and same

measuring on line adjoining property of Marcy and Salter, by one hundred (100) feet front on Second and Third streets.

Square number fifteen, being an irregular piece of ground, bounded by Third and Madison streets and Jefferson avenue, having a front of one hundred and one (101) feet and seven inches on Third street and sixty-two (62) feet and two (2) inches on Madison street.

Square number eighteen, being an irregular piece of ground, bounded by Monroe street, Jefferson avenue, Fifth street, and property of Marcy and Salter, having one hundred and seventeen (117) feet three (3) inches and eight (8) lines front on the Marcy and Salter property, one
59 hundred (100) feet on Fifth street, and one hundred and forty-four (144) feet four (4) inches and four lines on Monroe street. (Marginal note, third page, T. L. M.)

Square number nineteen, being an irregular piece of ground, bounded by Jefferson avenue, Monroe, and Fifth streets, having one hundred and twelve feet two (2) inches front on Monroe street, one hundred and one (101) feet seven (7) inches front on Fifth street, and feet front on Jefferson avenue.

Square number twenty-three, being an irregular piece of ground, bounded by Jefferson avenue, Fifth, Sixth, and Madison streets, having three hundred and nineteen (319) feet seven (7) inches front on Jefferson avenue, one hundred and twenty-eight (128) feet and five (5) lines front on Fifth street, two hundred and twenty-one (221) feet seven (7) inches and eight (8) lines front on Sixth street, and three hundred and two (302) feet four (4) inches and eight lines front on Madison street.

Square number twenty-four, being an irregular piece of ground, bounded by Jefferson avenue, Fifth, Sixth, and Madison streets, having three hundred and nineteen (319) feet seven (7) inches front on Jefferson avenue, one hundred and twenty-eight (128) feet and five (5) lines
60 on Fifth street, two hundred and twenty-one (221) feet seven (7) inches and eight (8) lines on Sixth street, and three hundred and two (302) feet four (4) inches and eight (8) lines on Monroe street.

Square number twenty-eight, bounded by Jefferson avenue, Madison, Sixth, and Seventh streets, having three hundred and two feet four (4) inches and eight (8) lines on Jefferson avenue, and a like measurement on Madison street, and two hundred and twenty-two (222) feet seven (7) inches front on Sixth street, and two hundred and twenty-two (222) feet seven (7) inches front on Seventh street.

Square number thirty-one, bounded by Jefferson avenue, Seventh, Eighth, and Madison streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Madison street by two hundred and twenty-two (222) feet seven (7) inches front on Seventh and Eighth streets.

Square number thirty-three, bounded by Seventh, Eighth, and Monroe streets, and property of Marcy and Salter, having three hundred and two (302) feet four (4) inches and eight lines front on Monroe street, and a like measurement on line adjoining property of Marcy and Salter, by one hundred feet front on Seventh and Eighth streets.

61 Square number thirty-four, bounded by Monroe, Eighth, and Ninth streets, and property of Marcy and Salter, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Monroe street, and a like measurement on line adjoining property of Marcy and Salter, by one hundred feet front on Eighth and Ninth streets. (Marginal note, fourth page. (Signed) T. L. M.)

Square number thirty-five, bounded by Jefferson avenue, Eighth, Ninth, and Monroe streets, having three hundred and two (302) feet

four (4) inches and eight (8) lines front on Jefferson avenue and Monroe street by two hundred and twenty-two (222) feet seven (7) inches front on Eighth and Ninth streets.

Square number thirty-six, bounded by Jefferson avenue, Eighth, Ninth, and Madison streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Madison street by two hundred and twenty-two (222) feet seven (7) inches front on Eighth and Ninth streets.

Square number thirty-nine, bounded by Jefferson avenue,
62 Madison, Ninth, and Tenth streets, having three hundred and two (302) feet four (4) inches and eight lines front on Jefferson avenue and Madison street by two hundred and twenty (222) feet seven (7) inches front on Ninth and Tenth streets.

Square number forty, bounded by Jefferson avenue, Monroe, Ninth, and Tenth streets, having three hundred and two (302) feet four (4) inches and eight lines front on Jefferson avenue and Monroe street by two hundred and twenty-two feet seven inches front on Ninth and Tenth streets.

Square number forty-one, bounded by Monroe, Ninth, and Tenth streets, and property of Marcy and Salter, having three hundred and two feet four (4) inches and eight (8) lines front on Monroe street, and a like measurement on line adjoining property of Marcy and Salter, by one hundred (100) feet front on Ninth and Tenth streets.

Square number forty-two, bounded by Monroe, Tenth, and Eleventh streets, and property of Marcy and Salter, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Monroe street, and a like measurement on line adjoining property of Marcy and Salter by one hundred (100) feet front on Tenth and Eleventh streets.

63 Square number forty-three, bounded by Jefferson avenue, Monroe, Tenth, and Eleventh streets, having three hundred and two feet four (4) inches and eight (8) lines front on Jefferson avenue and Madison street by two hundred and twenty-two feet seven (7) inches front on Tenth and Eleventh streets. (Marginal note, fifth page. (Sgd.) T. L. M.)

Square number forty-four, bounded by Jefferson avenue, Madison, Tenth, and Eleventh streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Madison street by two hundred and twenty-two (222) feet seven (7) inches front on Tenth and Eleventh streets.

Square number forty-five, bounded by Madison, Tenth, and Eleventh streets, and property of V. Labarre, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Madison street, and a like measurement on line adjoining property of V. Labarre, by one hundred (100) feet front on Tenth and Eleventh streets.

Square number forty-six, bounded by Madison, Eleventh, and Twelfth streets, and property of V. Labarre, having three hundred and two
64 (302) feet four (4) inches and eight (8) lines front on Madison street and a like measurement on line adjoining property of V. Labarre, by one hundred (100) feet front on Eleventh and Twelfth streets.

Square number forty-seven, bounded by Jefferson avenue, Madison, Eleventh, and Twelfth streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Madison street by two hundred and twenty-two (222) feet seven (7) inches front on Eleventh and Twelfth streets.

Square number forty-eight, bounded by Jefferson avenue, Monroe,

Eleventh, and Twelfth streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Monroe street by two hundred and twenty-two (222) feet seven (7) inches fron t on Eleventh and Twelfth streets.

Square number forty-nine, bounded by Eleventh, Twelfth, and Monroe streets, and property of Marcy and Salter, having three hundred and two (302) feet four (4) inches and eight (8) lines on Monroe street, and a like measurement on line adjoining property of Marcy and Salter, by one hundred (100) feet front on Eleventh and Twelfth streets.

65 Square number fifty, bounded by Monroe, Twelfth, and Thirteenth streets, and property of Marcy and Salter, having (marginal note, sixth page. (Signed) T. L. M.,) three hundred and two (302) feet four (4) inches and eight (8) lines front on Monroe street, and a like measurement on line adjoining property of Marcy and Salter, by one hundred (100) feet on Twelfth and Thirteenth streets.

Square number fifty-one, bounded by Jefferson avenue, Monroe, Twelfth, and Thirteenth streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Monroe street by two hundred and twenty-two (222) feet seven (7) inches front on Twelfth and Thirteenth streets.

Square number fifty-two, bounded by Jefferson avenue, Madison, Twelfth, and Thirteenth streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Madison street, by two hundred and twenty-two (222) feet seven (7) inches front on Twelfth and Thirteenth streets.

Square number fifty-four, bounded by Thirteenth, Fourteenth, and Madison streets, and property of V. Labarre, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Madison street,

66 and a like measurement on line adjoining property of V. Labarre, by one hundred (100) feet front on Thirteenth and Fourteenth streets.

Square number fifty-five, bounded by Jefferson avenue, Madison, Thirteenth, and Fourteenth streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Madison street by two hundred and twenty-two (222) feet seven (7) inches front on Thirteenth and Fourteenth streets.

Square number fifty-six, bounded by Jefferson avenue, Monroe, Thirteenth, and Fourteenth streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Monroe street, by two hundred and twenty-two (222) feet seven (7) inches front on Thirteenth and Fourteenth streets. (Marginal note, seventh page. (Signed) T. L. M.)

Square number fifty-seven, bounded by Thirteenth, Fourteenth, and Monroe streets, and property of Marcy and Salter, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Monroe street, and a like measurement on line adjoining property of Marcy and Salter, by one hundred (100) feet front on Thirteenth and Fourteenth streets.

67 Square number fifty-eight, bounded by Monroe, Fourteenth, and Fifteenth streets, and property of Marcy and Salter, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Monroe street, and a like measurement on line adjoining property of Marcy and Salter, by one hundred (100) feet front on Fourteenth and Fifteenth streets.

Square number fifty-nine, bounded by Jefferson avenue, Monroe, Fourteenth, and Fifteenth streets, having three hundred and two (302) feet

four (4) inches and eight (8) lines front on Jefferson avenue and Monroe street by two hundred and twenty-two (222) feet seven (7) inches front on Fourteenth and Fifteenth streets.

Square number sixty, bounded by Jefferson avenue, Madison, Fourteenth, and Fifteenth streets, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Jefferson avenue and Madison street by two hundred and twenty-two (222) feet seven (7) inches front on Fourteenth and Fifteenth streets.

Square number sixty-one, bounded by Madison, Fourteenth, and Fifteenth streets, and property of V. Labarre, having three hundred and two (302) feet four (4) inches and eight (8) lines front on Madison street, by a like measurement on line adjoining property of V. Labarre, by one hundred (100) feet front on Fourteenth and Fifteenth streets.

68 4th. Eight lots of ground, situated in the same town, in square number twelve, bounded by Second, Third, and Madison streets, and Jefferson avenue, designated on said plan as lots numbers six, seven, eight, nine, ten, thirteen, fourteen, and fifteen of said square, lot number ten forming the corner of Jefferson avenue and Second street, measuring thirty-one (31) feet two (2) inches and six (6) lines front on Jefferson avenue, by one hundred and ten (110) feet (marginal note, eighth page. (Signed) T. L. M.) four (4) inches and two (2) lines in depth on the line fronting on Second street, and one hundred and seven (107) feet eleven (11) inches in depth on the line adjoining lot number nine of said square; lot number *number* nine (9) measuring thirty (30) feet three (3) inches front on Jefferson avenue by one hundred and four feet one (1) inch and four (4) lines in depth; lot number eight measuring thirty feet five (5) inches and four (4) lines front on Jefferson avenue by a depth of ninety-eight (98) feet eleven (11) inches; lot number seven measuring thirty (30) feet nine (9) inches front on Jefferson avenue by a depth of one hundred and twenty (120) feet two (2) inches and six lines; lot number six measuring thirty-one (31) feet one (1) inch and two
69 (2) lines front on Jefferson avenue by one hundred and thirteen (113) feet six (6) inches and three lines in depth; lot number thirteen, measuring thirty (30) feet front on Madison street by one hundred and eleven feet three inches and six lines in depth; and lots numbers fourteen and fifteen, measuring thirty (30) feet front on Madison street by a depth of ninety feet.

5th. Five lots of ground, situated in the same town, in square number twenty-two, (22,) bounded by Fifth, Sixth, and Madison streets, and by property of V. Labarre, and designated on said plan as lot number six, seven, eight, nine, measuring each thirty (30) feet front on Madison street by a depth between paral'el lines extending to the line of the property of V. Labarre; and lot number ten, forming the corner of Sixth and Madison streets, and measuring thirty-one (31) feet two (2) inches and four (4) lines front on Madison street by a depth and front on Sixth street of one hundred (100) feet.

6th. A certain tract of land, situated in the parish of Jefferson, immediately in the rear of the town of Brooklyn, bounded on the upper line by the property of V. Labarre, on lower line by property of Marcy and Salter, in front by Fifteenth street, of the town of Brooklyn,
70 and in the rear by lands of , said tract of land measuring eight hundred and twenty-five (825) feet two (2) inches front on said Fifteenth street by a depth of four thousand one hundred and thirteen (4,113) feet seven (7) inches on the upper line, three thousand one hundred and thirteen (3,113) feet on the lower line thereof. (Marginal endorsement, ninth page. (Signed) T. L. M.)

And after having given due and legal notice to the said defendant of the said seizure in the manner pointed out by law, I advertised the said property for sale after the expiration of the legal delay from the time of said notice, to wit, on the fifteenth day of February, 1870, by advertisements composed in English, announcing the sale to take place at the Merchants' and Auctioneers' Exchange, Royal street between Canal and Custom-house streets, in the second district of this city, on the 22nd day of March, 1870, at 12 o'clock a. m.; said advertisements were inserted and published in English, in two papers in the city of New Orleans; in the New Orleans Republican, from the said fifteenth day of February, 1870,
71 to the day of sale, being full thirty days from the date of the first notice given in said newspaper; said advertisements were inserted and published in said newspaper on the 15th, 18th, 24th, and 27th days of February 1870, and on the 4th, 10th, 18th, and 21st days of March, 1870. Said advertisements were also inserted and published in the English language in the parish of Jefferson, to wit, in the Louisiana State Register on the 2nd, 12th, and 19th days of March, 1870.

And after having complied with and performed all the additional previous legal requisites, and after the said property having been duly appraised did expose the same at public sale at auction, according to law, at the Merchants' and Auctioneers' Exchange, Royal street between Canal and Custom-house streets, in the second district of this city, on the said twenty-second day of March, eighteen hundred and seventy, at 12 o'clock m.

And at the time and place of sale I did read verbatim, and in a loud and audible voice, the certificate of the recorder of mortgages for the parish of Orleans, and the city of New Orleans, delivered on the day of sale, and by which certificate it appears that there are no other mortgages standing in the name of said defendants, and recorded
72 against the before-described property than the following, to wit:

1st. (B. 84, folio 600. Recorded May 24th, 1867.) The mortgage granted by said railroad, in favor of Saml. Smith and Co. as per act of S. Magner, notary, dated 1st March, 1867, to secure 1,000 bonds of $1,000.00 each, int., costs, &c., &c.

2nd. (B. 73, fo. 85. Rec'd April 8th, 1859.) The one granted by the same in favor of Edmund J. Forstall, per act of Selim Magner, notary, dated 1st April, 1859, to secure the sum of $200,000.00, or 2,000 bonds of $1,000.00 each, int., costs, &c., &c., which mortgage has been re-inscribed in B. 87, fo. 215, on 27th March, 1869.

3rd. (B. I 11, fo. 44 No. 37 seq. Recorded 24th Dec., 1861.) The general one in favor of the Confederate States, resulting from a judgment rendered by the second district court on the 19th November, 1861, securing to said States all dividends to become due on 20 shares of the capital stock of said company to J. Ballester, of Massachusetts, &c., &c.

(Written across the face of the three preceding paragraphs:)

Cancelled April 23rd, 1870, by order of court (seventh district court) of date 31st March, 1870, so far as the property sold is concerned.

(Signed) MICH. DE ARMAS,
D'y Sheriff.

4th. (B. J 11, fo. 44. No. 37 seq. Rec'd 24th Dec., 1861.) The
73 general one in favor of the same, per judgment rendered by the second district court on the 16th November, 1861, securing as above all dividends to become due on 1,405 shares of the capital stock of said company belonging to Charles Morgan, of New York, &c., &c.

5th. (B. J 13, fo. 118. No. 5788. Rec'd April 10th, 1869.) The general

one in favor of Charles Morgan, by virtue of a writ of seizure and sale, issued by the U. S. circuit court, dated 5th April, 1869, of the whole of the completed grand division of the said railroad between Algiers and Berwicks Bay, &c., &c.

(Written across the face of the two preceding paragraphs :)

Cancelled April 23rd, 1870, by certificate of sheriff, as far as they bear on the property sold.

(Signed) MICH'L DE ARMAS,
Dy. Sheriff.

6th. (B. I 13, fo. 148. No. 22. Rec'd May 12th, 1869.) The general one in favor of Hicks L. Youngs, as per judgment rendered by the parish court of St. Charles Parish, on the 9th of December, 1868, for the sum of $500.00, int., costs, &c., &c., against the N. O., O. & G. W. R. R. Co.

7th. (B. I 13, fo. 402. No. 2201. Rec'd Dec. 29th, 1869.) The general one in favor of Charles B. Singleton, as per judgment rendered by the 7th district court on 24th December, 1869, for the sum of $6,065.00, int. costs, &c., &c., against same co.

(Written across the face of the two preceding paragraphs :)

(Cancelled as on foregoing page.) Cancelled, (see foregoing page.)

75 (Marginal note, eleventh page. (Signed) T. L. M.)

8th. (B. I 13, fo. 402. No. 2194. Rec'd Dec'r 29th, 1869.) The general one in favor of Samuel Engler, as per judgment rendered by the 7th district court on 24th December, 1869, for the sum of $4,936.00, int., costs, against the same company.

(Written across the face of the above paragraph :) Cancelled April 23d, 1870, by (see next page.)

9th. (B. J 13, folio 434.) The general one in favor of the following-named persons resulting from writs of fiera facias rendered by the courts herein named, viz :

Charles B. Singleton, 7th district court, No. 2201. Samuel Engler, 7th district court, No. 2194. Miles Taylor, 7th district court, No. 2249. Charles Morgan, 7th district court, No. 2250. Charles Morgan, 7th district court, No. 2251. Jules A. Blanc, 4th district court, Nos. 23288 and 23287, (for the sums stated in the said judgments,) against the franchises of the N. O. and G. W. R. R., and all of its constructions on said railroad, from Algiers to Berwicks Bay, rights, ways, privileges, &c., and the franchises to construct a railroad from the terminus at Brashear through the western part of said parish, and through the parishes of Iberia and Lafayette, and into the parish of St. Landry, and thence to some point on the Sabine River and Texas.

(Written across the face of the above paragraph :)

Certificate of sheriff so far as they bear on the property sold.

(Signed) MICH. DE ARMAS,
Dy. Sheriff.

76 And at the same time and place I did also read verbatim, and in loud, audible voice the certificate of the register of conveyances for the parish of Orleans, and city of New Orleans, delivered on the day of sale, by which certificate it does appear that the New Orleans, Opelousas and Great Western Railroad Company have alienated the said before-described property.

REMARKS.

By act of sale of the U. S. marshall of the district of Louisiana, dated 31st of July, 1869, by virtue of a writ of seizure and sale in the suit en-

titled Charles Morgan versus the Opelousas and Great Western Railroad Company, the whole of the completed grand division of the New Orleans, Opelousas and Great Western Railroad Company, between Algiers (opposite the city of New Orleans) and Berwicks Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty (80) miles, together with the roadbeds of the main tracts and branches, and also all the debts and lands specially appertaining to them, and all the buildings, wharves, and all the improvements and franchises belonging and appertaining to this division of the road, and also all and singular the cars, locomotives, engines, machinery, fixtures, utensils, implements, right of way, and
77 effects generally of every nature and description whatsoever in and upon the said divisions of the said railroad if in any wise attached and appertaining to the same, without any exception or reservation, among which is comprised certain landed property acquired for the use of the said railroad, more particular description said act of sale recorded in this office on the (16th) sixteenth day of September, (1869,) one thousand eight hundred and sixty-nine, at 12 o'clock an 1 25 minutes m. Charles Morgan, became purchaser of said railroad for the price of two millions and fifty thousand dollars ($2,050,000.00.) Terms of payment specified in said act.
(Marginal note, twelfth page:) (Sgd) T. L. M.

And at the same time and place, I did also read verbatim, in a loud and audible voice, the certificate of the recorder of mortgages, in and for the parish of Jefferson, delivered on the day of sale, and by which certificate, it appears there are no other mortgages standing in the name of the New Orleans, Opelousas and Great Western Railroad Company, and recorded against the said before-described property, than the following, to wit:

1st. Forfeited to the State for the 1 % sp'l State tax of
78 1868..... $24 00
2nd. Forfeited to the State for the 1 % sp'l State tax of
1868 ..... 160 00
3rd. Forfeited to the State for the tax of 1865 ..... 9 25
4th. Forfeited to the State for the tax of 1866 ..... 60 00
5th. Forfeited to the State for the tax of 1866 ..... 60 00

(Written across the face of the 2nd, 3d, 4th, and 5th:) Cancelled, & etc., & etc. (See next page.)

6th. Forfeited to the State for the tax of 1867 ..... 84 00
7th. Forfeited to the State for the tax of 1867 ..... 12 60
8th. Forfeited to the State for the tax of 1868 ..... 2 10
9th. Forfeited to the State for the tax of 1868 ..... 12 60

10th. The notice of seizure in the case of Charles Morgan versus said Company of the U. S. circuit court—B. I 5, fo. 16.

11th. The general one rendered Dec. 20th, '69, No. 2201, of 7th district court, in favor of C. B. Singleton, and against said company for twenty-one thousand six hundred and eighty dollars, with interest subject to a credit of fifteen thousand six hundred and fifteen $\frac{42}{100}$ dollars, recorded Jan. 14, '70, B. J 5, f. 69.

12th. The general one rendered same day, No. 2194, of same court, in favor of Samuel Engler, and against said company, for nineteen
79 thousand two hundred and fifty-one $\frac{22}{100}$ dollars, $2.75 costs of protest, subject to a credit of fourteen thousand three hundred and eighty-five $\frac{37}{100}$ dollars. Recorded Jan. 14, '70. B. J 5, fo. 69.

(Written across the face of 6th, 7th, 8th, 9th, 10th, 11th, and 12th :)
Cancelled April 23rd, 1870, by certificate of sheriff, so far as bear on the property sold.
(Signed) MICH. DE ARMAS,
Dy. Sheriff.

13th. The general one rendered January 10th, '70, No. 2251, of same court, in favor of C. Morgan and against said company, for three hundred and ninety-nine thousand seven hundred and twenty dollars, with legal interest, (then, after deducting $293,344.50, int., at same rate until paid.) Recorded Jany. 31, '70. B. I 5, fo. 72.

14th. The general one rendered same day, No. 2248, of same court, in favor of Miles Taylor and against said company, for twenty thousand dollars, with legal interest, and after deducting $14,675, to bear interest at same rate until paid. Recorded Jan. 31, '70. B. J, fo. 72.

(Written across the face of 13th and 14th :)
Cancelled April 23rd, 1870, by certificate of sheriff, as far as they bear *bear* on the property sold.
MICH. DE ARMAS,
Dy. Shff.

15th. The general one rendered same day, No. 2250, of same court, in favor of C. Morgan and against said company, for two hundred and forty-one thousand three hundred and forty-seven $\frac{40}{100}$ dollars, with eight % interest, from Oct. 1, '69, and all costs. Recorded Jany. 31st, 1870. B. J 5, fo. 73.

80 16th. The general one rendered January 31st, 1870, No. 2249, of same court, in favor of Miles Taylor and against said company for six thousand four hundred and thirty-two $\frac{50}{100}$ dollars, with 8 % interest from October 1st, 1869, and costs. Recorded Jan. 31, 1870. B. J 5, fo. 74.

17th. The general one rendered January 24, '70, No. 23288, of the fourth district court of N. O., in favor of Jules A. Blanc and against said company, for one hundred and forty-one thousand eight hundred dollars, with interest from —— day of ———, 18—, then, after deducting from the total amount one hundred and three thousand one hundred and sixty-six $\frac{15}{100}$ dollars, with interest on the balance until paid, and all costs. Recorded Jany. 31, '70. B. J 5, fo. 73.

(Written across the face of 15th, 16th, and 17th :)
Cancelled April 23rd, by certificate of sheriff, so far as they bear on the property sold.
(Signed) MICH. DE ARMAS,
Dy. Shff.

18th. The general one rendered same day, No. 23287, of same court, in favor of Jules A. Blanc and against said company, for one hundred and forty-seven thousand four hundred and thirty-two $\frac{90}{100}$ dollars, with 8 % interest from Oct. 1, '69, and costs. Recorded Jany. 31, '70. B. J 5, fo. 74.

81 19th. The notice of seizure in case of C. B. Singleton versus said company; Samuel Engler versus same; Chas. Morgan vs. same; Miles Taylor vs. same; Jules A. Blanc vs. same; Nos. 2201, 2194, 2250, 2251, 2248, 2249, of the seventh district court of New Orleans; No'. 23288 and 23289 of the fourth district court. Recorded Feby. 21, '70. B. J 5, fo. 79 to 83.

(Written across the face of 18th and 19th :)

Cancelled April 23d by certificate of *of* sheriff, so far as they bear on the property sold.

(Signed) MICHL. DE ARMAS,
Dy. Shff.

20th. The general one rendered February 14th, 1870, No. 2578, of 7th district court, in favor of Jules A. Blanc and against said company, for two thousand five hundred and seventy-three dollars, with five per cent. interest, as follows, on $1,440 from Oct. 1, '67; on $1,200 from April 1st, 1868; on $180 from Oct. 1st, 1868, and on $1,520 from April 1st, 1869, up to 25th May, 1869, and then, after deducting from the total amount of said principal and interest the sum of five thousand three hundred and thirteen $\frac{25}{100}$ dollars, upon the balance until paid and costs. Recorded March 8, '70. B. J 5, fo. 85.

(Written across face of 20th:)

Cancelled April 23rd, 1870, by certificate of sheriff, so far as they bear upon the property sold.

(Signed) MICH. DE ARMAS,
Dy. Shff.

(Marginal note, fourteenth page:) (Signed) T. L. M.

And at the same time and place I did also read verbatim, and in a loud and audible voice, the certificate of the register of conveyances in and for the parish of Jefferson, delivered on the day of sale, and by which certificate it does not appear that the New Orleans,
82 Opelousas and Great Western Railroad Company has alienated the said before-described property, with the exception of the franchises of said company before mentioned firstly described which has been alienated on the 31st July, 1869, by the U. S. marshal, unto Charles Morgan, by virtue of a sale made by said marshal in matter of C. Morgan vs. Said company in the circuit court of the U. S. for the 5th jud. circuit, dist. of La. (B. L J, 252.)

When Jules A. Blanc, being the highest and last bidder for account of Charles Morgan, the said before-described property was adjudicated to the said Jules A. Blanc, for account of Charles Morgan, for the price and sum of two hundred and fifty thousand dollars, ($250,000.00,) payable cash, which was settled for in the following manner, to wit:

1st. The purchaser, being one of the plaintiffs in the above-entitled cases, has retained in his hands, in part satisfaction of his judgment, the sum of one hundred and ninety-seven thousand and twenty-five dollars and three cents.	$197,025 03
2d. And said purchaser paid me in cash the balance
83 of the price of adjudication, amounting to the sum of fifty-two thousand nine hundred and seventy-four dollars and ninety-seven cents.....	52,974 97
Amount of sale.....	$250,000 00

Now, therefore, know all men by these presents that I, the said sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana in such case made and provided, do sell and transfer the said before-described property to the said Charles Morgan, and all the right and titles which the said defendant had in or to the said before-described property, to have and to hold the same to the said Charles Morgan, his heirs and assigns, forever.

In witness whereof I have hereunto signed my name at New Orleans, in the State of Louisiana this twenty-second day of April, in the year one thousand eight hundred and seventy, and ninety-fourth year of the Independence of the United States of America.

(Signed) THOS. L. MAXWELL,
Sheriff of the Parish of Orleans.

(Written on the margin:) Fifteenth page. (Signed) T. L. M.
Signed in the presence of:—
84 (Signed) MICHL. DE ARMAS.
(") GEORGE L. BLOOMFIELD.

(Note by clerk.) Five internal-revenue stamps, of fifty dollars each, duly cancelled, attached.

Recorded in conveyance office in book No. 97, folios 595, 596, and 597 & 598.

New Orleans, April 25th, 1870.

[SEAL.] (Signed) A. MOREL, *Dy.*

Registered in C. O. Book L, folio 493, 494, 495, 496, 497, 498, 499, parish of Jefferson, April 29th, 1870.

[SEAL.] (Signed) T. McCORMACK,
Recorder.

I hereby certify that the within deed was this day duly recorded in deed-book A, folios Nos. from 297 to 316, in the office of the seventh district court for the parish of Orleans.

New Orleans, May 5, 1870.

(Signed) H. J. DUSSOR,
Dy. Clerk.

I hereby certify that the within deed was this day duly recorded in deed-book E, folios Nos. 452 to 466, inclusive, in the office of
85 the fourth district court for the parish of Orleans.

New Orleans, May 7, 1870.

[SEAL.] (Signed) F. WALL, *Dy. Clerk.*

I do hereby that the following taxes on the property herein conveyed have been paid as per receipt and report on file in the sheriff's office, to wit: Parish of Jefferson, right bank, 1869, $199.50; State taxes 1860 & 1865, convention, paid as per auditor's certificate on file; State taxes 1861, 1862, 1863, and 1864, exempted by law No. 1126; State taxes 1866 and 1867, levee & 1868, $346.30. No. 1127, special tax @ 1 %, 1867, $264.00; 2 certificates of redemption, $400.00; State taxes, 1869, $150.00.

Parish taxes 1860, 1865, 1866, 1867, and 1868 paid; parish taxes 1861, 1862, 1863, & 1864, exempted by law; charges & commission, F. Daubert, $50, paid.

New Orleans, May 9th, 1870.

(Signed) MICHL. DE ARMAS,
Dy. Shff.

Act of mortgage to secure bonds of N. O. O. & Gt. Western R. Rd. Company, in favor of E. J. Forstall, offered by defdt. in open court.—Filed Nov. 3d, 1873.

STATE OF LOUISIANA,
City of New Orleans :

86 Be it known that this day, before me, Selim Magner, a notary public in and for this city and parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared William G. Herves, esq., of this city, president of the New Orleans, Opelousas and Great Western Railroad Company, a duly incorporated institution of this State, and herein acting in his said capacity by virtue and in pursuance of the resolutions of the board of directors of said company, passed on the seventeenth day of March, eighteen hundred and fifty-nine, which resolutions, duly certified copies whereof are hereunto in the margin annexed for reference, are in the words and figures following, to wit:

1st. Resolved, That for the purpose of obtaining means for the further construction of the road, the president be, and he is hereby, authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable
87 semi-annually in coupons attached to said bonds of eight pounds five shillings sterling, or forty dollars, each, the principal of said bonds being made payable at their office in New Orleans, and the interest thereof being made payable in New Orleans, New York, or London, as the president by his endorsement may determine.

2nd. Resolved, That the president be further authorized and instructed to secure the payment of said bonds and the interest thereon by a first mortgage on the first grand division of the railroad of the company from Algiers (opposite the city of New Orleans) to Berwick's Bay, together with the land over which said road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to this portion of the road.

3rd. Resolved, That such an amount of money as may be necessary to meet each semi-annual interest of the outstanding bonds of the company shall be provided for pro rata by monthly deposit in the Louisiana State Bank of this city, and entered as follows: "The New Orleans, Opelousas and Great Western Railroad Company's interest account, and all funds so deposited, shall be considered special,
88 and shall not be used for any other purpose than for the payment by said bank of running interests on the bonds of the company as maturing, and the president is hereby authorized to sign an act of agreement with the president of said bank binding the company as aforesaid.

4th. Resolved, That in case the Louisiana State Bank should decline to be the agents of said New Orleans, Opelousas and Great Western Railroad Company, or in case the charter of said bank should expire, then the president of this company shall choose any other of the chartered banks of this city for the carrying out of the purposes of these resolutions.

Which said appearer declared that in pursuance of the above-recited resolutions, and also by virtue of the authority conferred upon said company by, first, the ninth section of an act of the legislature of said State of Louisiana, entitled "An act to incorporate the New Orleans,

Opelousas and Great Western Railroad Company," duly approved on the 22nd day of April, 1853, (No. 149,) and, second, by another act of the same legislature, duly approved on the twentieth day of
89 March, 1856, entitled "An act to extend the powers of railroad companies," (No. 194,) he has in his capacity aforesaid this day issued two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, signed by him and by Benjamin F. Flanders, treasurer of said company, redeemable on the first day of April, eighteen hundred and eighty-nine, for the sum of one thousand dollars ($1,000) each, bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons of forty dollars, or eight pounds five shillings sterling each, the principal of said bonds being made payable at the office of the company in the city of New Orleans, New York, or London, as he, the said president, may by his endorsement provide.

And all of which bonds have been severally marked "ne varietur," and countersigned by me, said notary, for the purpose of more effectu*ally* identifying the same herewith.

Now, therefore, in consideration of the premises, and in order to secure the full, faithful, and punctual payment and the redemption
90 of each and all the said bonds (this day issued as *as* aforesaid) to any future holder or holders thereof, and to each and every one of them, when the same shall become due and payable, together with the interest accruing thereon, and in the manner and at the periods of time hereinabove stipulated, as evidenced by the coupons attached to the said bonds respectively, payable on the first days of April and October of each year, the said New Orleans, Opelousas and Great Western Railroad Company do by these presents, by their president, (the said William G. Harris,) grant in favor of Edmund J. Forstall, or bearer, as well as in favor of all and every person and persons whomsoever who may become the holder or holders of said bonds or coupons, or any of them, a first mortgage, lien, or privilege upon the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches; also all the depots and lands specially appertaining to them; all
91 the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road herein mortgaged and referred to; and, also, all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, right of way, and effects generally of every nature and description whatsoever in use upon the division of the said railroad, or in any wise attached or appertaining to the same, without any exception or reservation, as well as all such as shall or may hereafter at any time be placed upon or attached to the said division of the said railroad, whether for the purpose of replacing others removed therefrom, or from any other cause whatsoever; the said company promising by their said president not to alienate or encumber, nor in any way affect, the same, or any part or portion thereof, to the prejudice of these presents.

By reference to the hereto annexed certificates of the recorder of mortgages in and for the parishes of Orleans, Jefferson, St. Charles, La Fourche, Interior, Assumption, Terre Bonne, and St. Mary, respectively, traversed by the said division of the said railroad herein mortgaged, it will appear that there exists no mortgage or encumbrance whatsoever
92 inscribed against the said division of the said railroad, franchises,

and appurtenances, nor any of the lands or property connected there with owned by the said company.

And now personally came and appeared the said Edmund J. Forstall, who, after having read the foregoing act of mortgage, declared that he does by these presents accept the same as well for himself as for all and every other person or persons who may hereafter become the purchaser or purchasers, assignee or assignees, holder or holders of the said bonds or coupons, or any number thereof, or any of them, together with all the rights, privileges, and benefits thereto belonging, or in any wise appertaining.

Thus done and passed in my office, at the said city of New Orleans, in presence of Edward G. Gottschalk and Forester Brugere, witnesses of lawful age, domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, the said notary, on the first day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

(Original signed) WILLIAM G. HEWES,
President.

(" ") EDM. J. FORSTALL.

93 E. G. GOTTSCHALK.
F. BRUGIER.

S. MAGNER, *Not. Pub.*

I, John Bendernagel, custodian of notarial records for the parish of Orleans, do hereby certify the foregoing to be a true copy of the original among the acts of Selim Magner, notary, whose records are in my possession as custodian aforesaid.

Witness my hand and official seal, at New Orleans, this third day of November, A. D. 1874.

[SEAL.] (Signed) J. BENDERNAGEL,
Custodian of Notarial Records.

(Testimony of A. C. Hutchinson, offered in evidence in open court June 3rd, is already copied on page 41 of this transcript.

Copy of protest filed in connected with testimony of Mr. Hutchinson, and offered in evidence by defendant in open court June 3rd, 1873, is copied on page fifty-four hereof.)

Act of sale by United States marshall.

94 United States of America, district of Louisiana.

CHARLES MORGAN
vs.
THE N. O., OPELOUSAS AND G. WESTERN R. R. CO. } No. 5788.

Whereas I, F. J. Herron, late marshall of the United States for the district of Louisiana, by virtue of a writ of seizure and sale to me directed by the honorable the circuit court of the United States for the fifth judicial circuit and district of Louisiana, in the suit entitled "Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company," after having fulfilled and complied with all the previous legal requisites, did seize the following described property, viz The whole of the completed grand division of the New Orleans, Ope-

lousas and Great Western Railroad, between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of (80) eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands specially appertain-
95 ing to them; and all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road; also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, right of way and effects generally of every nature and description whatsoever in and upon the said division of the said railroad, or in any wise attached or appertaining to the same, without any exception or reservation, among which is comprised certain landed property acquired for the use of the said railroad, more particularly described as follows, to wit:

A certain piece or portion of land, situate in the parish of St. Mary, on the west bank of the Bayou Boeuf, being across the whole depth of the lot of ground belonging to Hypolite Patout, at a point thirty-five feet south of the center line of said railroad co.; thence parallel with the said railroad's center line westwardly to the line of property of said Patout and O. Lundry; thence northwardly across said railroad sixty feet; thence parallel with said railroad line eastwardly to the water's edge of said bayou; thence southwardly along the margin of said
96 bayou, sixty feet, to the place of beginning.

2nd. A piece of ground having twenty-five feet front on said Bayou Boeuf by fifty feet deep on the upper or north side of said railroad, and adjoining the piece or strip jointly above described, making the whole front on said bayou (85) eighty-five feet.

3rd. All the improvements on said portions of land and appurtenances thereof, all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in any wise appertaining.

That certain portion of a tract of land or plantation on Tiger Island, situate on the eastern bank of Berwick's Bay, acquired by the said company from R. B. & T. T. Brashear, and which formed a part of the tract of land acquired in 1842 by R. B. & T. T. Brashear from their father, Dr. Walton Brashear, by notarial act passed before I. A. Dumantrail, recorder parish of St. Mary's, which act is referred to for particular certification of bounds and limits to be used for a station-house, &c., not exceeding one acre of land.

That portion of land on the margin of Berwick's Bay, extend-
97 ing a distance of 130 feet above, and two hundred feet below the centre line of the railroad, with the wharves, sheds, and other buildings thereon.

All that portion of land on the margin of Berwick's Bay, and occupied for a coal-yard, wharf, and for a cattle-landing, and for the purposes and uses connected with said railroad.

The quantity of land for a station-house, water-tank, or depot, and not exceeding one acre in superficies, on the immediate line of the road, and making part of a tract formerly owned by Charles O'Brien, situate on the northern bank of Bayou Boeuf, in the parish of St. Mary, and bounded on the east by lands of John Collins, and in the west of lands of Young.

A quantity of land for a station-house, water-tank, or depot, and having one acre in superficies, on the immediate line of the road, and being a part of a tract of land formerly owned by I. A. Walford, on the north bank of Bayou Boeuf, in the parish of St. Mary, bounded on the east by land of John Tarleton, and on the west by land of J. G. Sanders.

A quantity of land, one acre in superficies, on the immediate
98 line of the road, for a station-house, water-tank, or depot, and making part of a tract of land owned by John Tarleton in 1853, and situate on the north bank of Bayou Boeuf.

A quantity of land, for a station-house, water-tank, or depot, on the line of said railroad, and making part of a certain tract of land owned in 1853 by J. Y. Saunders, and situated on the north bank of Bayou Boeuf, parish of St. Mary, and bounded on the east by lands of J. N. Wolford, and on the west by lands of Charles Bailess.

A certain piece or portion of ground situated in the parish of Terre Bonne, in this State, being of a triangular form, and bounded on one side by the line of the road of said New Orleans, Opelousas and Great Western Railroad Company, on the other side by the property of Daniel Morrison, and on the third line by the public road leading along Bayou L'Orms to Attakapas, said piece or portion of land, together with all the rights, ways, servitudes, privileges, and advantages thereunto belonging, or in any wise appertaining.

A lot or tract of land, with a front of 125 feet, or 62 feet 6 inches on each side of the centre-line of the railroad embankment on the public road, by a depth of 300 feet between parallel lines, running parallel with the centre-line of the railroad, and westward from the Bayou Terre Bonne.

99 Also, another lot or tract of land, fronting on the Bayou Terre Bonne 500 feet, or 250 feet on each side of the centre-line of said railroad, and comprising the whole of the space between said front and the public road.

The following-described portions of land, formerly belonging to Philip B. Key, and situated and being the La Fourche swamp-lands on Bayou Bleu, and bounded as described and set forth in a notarial act passed before J. C. White, notary public, dated at Thibodeaux on the 3rd day of May, 1854, between Philip B. Key and the said New Orleans, Opelousas and Great Western Railroad Company, one of said tracts containing 42,000 superficial feet, and the other containing about 70,400 superficial feet.

A certain lot or tract of land situated on Bayou des Allemands, and upon the upper or right side (looking west) of the road where it strikes said bayou, which was acquired to construct and maintain wharves, sheds, or such buildings as they, the said railroad company, might require, or for any other purpose whatsoever. Said lot or tract of land is described as follows, to wit: Beginning at a point on the
100 centre of the main tract of the railroad, at the east end of the revolving draw-bridge, thence northeastwardly along the centre of said main track one hundred feet; thence northwestwardly at right angles to the line of the railroad (250) two hundred and fifty feet; thence in a parallel line to the railroad southwestwardly to the bank of Bayou des Allemands; thence along the margin of said bayou southwestwardly to the point of beginning.

A certain quantity of land (30) feet in width by one hundred feet in depth, parallel and adjoining the said railroad on the lower side of Destrehan or Harvey's Canal, and on the side nearest to the river, and commencing on the line of said canal—acquired to erect station-house, water-tank, or depot, and house for bridge-keeper.

All those portions of ground lying and being in the town of Brooklyn, near Gretna, as laid out by the said New Orleans, Opelousas and Great Western Railroad Company, and represented in a plan, No. 40, made by the authority of the said company, and deposited in the office

of Selim Magner, a notary public in and for the city of New
101 Orleans and parish of Orleans, which said portions of ground are composed, 1st, of all the squares and parts of squares represented in the said plan, and lying between Front street and extending to the Mississippi River, and, 2nd, of all the space extending entirely across the said town of Brooklyn, and from Sixth street to the Mississippi River, as represented, delienated, and laid down on the said plan as reserved for the use of the said New Orleans, Opelousas and Great Western Railroad Company, and bounded by the square and fractional squares numbered on the said plan by the numbers 7, 8, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 23, & 24, which said portions of ground are embraced in and make a part of a certain tract of land or plantation situate on the right bank of the Mississippi River, in the parish of Jefferson, about two miles above the city of New Orleans, fronting partly on the first and partly on the fourth districts of New Orleans, having four arpents eleven toises front at the river Mississippi, by forty-five arpents in depth between parallel lines, with all the improvements thereon.

A certain portion of ground situate in the town of Gretna, in
102 the parish of Jefferson, in square bounded by Fourth and Fifth streets, La Fayette avenue, and the village of Mechanickham, measuring thirty feet front on Fourth street by nineteen feet in depth on the line nearest to Mechanickham, and seventeen feet three inches in depth on the side nearest to La Fayette avenue.

A certain portion of the ground situate in the town of Gretna, in the parish of Jefferson, being part of a lot designated by No. 14, in square No. 7, on the plan of said town, drawn by E. H. Springbett, architect and surveyor, on the 24th of June, 1839, and deposited in the book of plans of J. B. Marks, notary, in New Orleans; said portion of ground measures thirty-nine feet two inches and five lines front in Fourth street, by thirty feet in depth on the side nearest Mechanickham, and nineteen feet two inches on the line of property belonging to Jacob Saunders.

A certain portion of ground in the village of Mechanickham, in the parish of Jefferson, in square designated by No. 9, on a plan made by H. Grant, 2nd February, 1842, and deposited in the office of L. R. Kinney, late notary; said square is bounded by Third, Fourth, Cuvier streets, and Copernie avenue; said portion of ground measures
103 one hundred and twenty feet front on Fourth street, by five feet ten inches in front and in depth on Copernie avenue, and ten feet six inches in depth on the line nearest Cuvier street, and forms part of a lot of ground designated by lot No. one of said square No. 9.

A certain portion of ground, situate in the village of Mechanickham, in the parish of Jefferson, in square designated by the No. 13, bounded by Fourth street, Fifth and Lavoisier streets, and the dividing-line of Gretna and Mechanickham, as represented on a certain plan made by H. Grant, dated 2nd February, 1842, and deposited in the office of the above notary; said portion measures seventy-three feet ten inches and two lines front on Fourth street, by twenty feet ten inches on the side nearest to Lavoisier street, and twenty feet ten inches on the dividing-line of Gretna and Mechanickham, and forms part of lot No. 2 of square No. 13, as per said plan.

A certain portion of ground, situate in the village of Mechanickham, in the parish of Jefferson, being a part of certain lot of ground designated by No. 1, in square No. 7; said lot forms the corner of La-
104 fayette avenue and Fourth street; said portion measures, in English measure, one hundred and fifty feet on Fourth street, by seventeen feet three inches on the dividing line of property belonging

to Horace Dost, f. m. c., and *and* sixteen feet two inches in depth, and front on Lafayette avenue.

A certain portion of ground, situate in the town of Gretna, parish of Jefferson, being a portion of lots 1 & 2, in square designated by No. 8, on a plan of said town, bounded by Lafayette avenue, Fourth and Fifth streets, and the lower line of said town. The said two lots of ground adjoin each other, and measures each thirty feet front on Lafayette avenue, by a depth of one hundred and fifty feet between parallel lines. No. 1 forms the corner of Lafayette and Fourth streets, all American measure.

A certain portion of ground, situate in the village of Mechanickham, in the parish of Jefferson, in square bounded by Fourth, Newton, Fifth, and Lavoisier streets, per plan of 35 lots of ground situate in said village, made by and deposited in the office of L. R. Kinney, late notary;

105 said portion of ground measures 110 feet front on Fourth street, by (16) sixteen feet in front and depth on Lavoisier street, twelve feet in depth on the dividing line of lot No. 13, and 110 feet more or less on the rear line; said portion of ground being a part of lot No. 110, forming the corner of Lavoisier and Fourth streets.

A certain strip of ground, formerly a portion of lot No. 7, measuring in length 175 feet, or the depth of said lot situated on Fourth street, in square No. 9, in the village of Mechanickham, in the parish of Jefferson; the said strip of land measures, on Cuvier street, twelve feet, and at the other end of said strip of land, on Fourth street, it measures 10 feet.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, in the square bounded by Third, Fourth, Copernie avenue, and Cuvier streets, making part of lot designated as No. 1 of square No. 9, on a plan drawn by H. Grant, surveyor, on February 2,1842, deposited in the office of L. R. Kinney, late a notary for the parish of Jefferson, which piece measures 125 feet front on the street or railroad, 27 feet in depth on Copernie avenue, and 27 feet in depth on line of property of J. S. Whitaker.

106 A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, in the square bounded by Lavoisier, Newton, Fourth, and Fifth streets; said piece or portion measuring 110 feet on Fourth street, 12 feet deep from the line of the street, and front on Newton street, and 14 feet deep from the line of the street, next to the property of G. Hahn.

A certain portion of ground, situate in Mechanickham, parish of Jefferson, forming part of lot designated by No. 4 of square No. 11, bounded by Third, Fourth, Lavoisier, and Newton streets, as represented on a plan of H. Grant, surveyor, dated 2d February, 1842, deposited in the office of the late L. R. Kenny, notary for the parish of Jefferson; which portion measures 25 feet front on Fourth street, 6 feet in depth from the line of the street adjoining property of J. Gering, and five feet in depth from the line of the street on the side adjoining property of F. Kramne.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, forming part of lot No. 12 in square No. 15, bounded by Newton, Fourth, and Fifth streets, and Copernie avenue, as represented

107 on a plan of A. de Young, surveyor, on the 23rd of January, 1851, and deposited in the office of J. R. Borgsbede, recorder and ex-officio (notary) for the parish of Jefferson, on the 26th of March, 1851; which portion of ground measures 30 feet front on Fourth street, on the railroad five feet deep from the line of the street, on a line adjoining property of F. Anselm, and 6 feet deep from the line of the street, on a line adjoining the property of P. Vollmert.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, forming part of the lot of ground designated by No. 12 of square bounded by Lavoisier, Fifth, Newton, and Fourth streets, as represented on a plan deposited in the office of Theodore Guyol as plan No. 312; which portion of ground measures 30 feet front on Fourth street, 14 feet in depth from the line of the street, and next to property of C. Spangenberg, and 13 feet in depth from the line of the street on the lower line.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, forming part of the lot designated by the No. 4 of square No. 11, bounded by Third, Fourth, Lavoisier, and Newton streets, as represented on a plan of H. Grant, surveyor, dated 2nd February, 1842, deposited in the office of L. R. Kenny, late notary for the parish
108 of Jefferson; which portion of ground measures 25 feet front on Fourth street, 7 feet from the line of the street in depth, adjoining property of Joseph Heickerbridge, and six feet in depth from the street adjoining property of N. Kesler.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, forming part of lot No. 7 in square No. 10, as represented on a plan of H. Grant, surveyor, dated February 2nd, 1842, deposited in the office of the late L. R. Kerny, notary public in the parish of Jefferson; which portion of ground measures 125 feet front on the railroad or Fourth street, 19 feet in depth from the line of said street and front on Copernie avenue, and 14 feet in depth on the line of property belonging to J. Walter.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, in square No. 11, bounded by Third, Fourth, Newton, and Lavoisier streets; said piece of ground measuring 75 feet front on Fourth street or the railroad of said company, 3 feet in depth from the line of the street, on the line of the property belonging to T. Kramne, and nothing on the lower line next Lavoisier street, with the
109 rights, ways, servitudes, privileges, and advantages thereunto belonging.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, forming part of lot No. 3 in square No. 11, bounded by Third, Fourth, Lavoisier, and Newton streets, as represented on a plan of H. Grant, surveyor, dated, Febr'y 2nd, 1842, deposited in the office of the late L. R. Kerny, notary public for the parish of Jefferson; which portion of ground measures 50 feet front on Fourth street, 5 feet deep on the line of property of N. Kesler from the line of the street, and three feet deep on the line of the street, on the line of property of C. Hausknecht.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, forming part of lot No. 5 in square No. 11, bounded by Third, Fourth, Lavoisier, and Newton streets, as represented on a plan of H. Grant, surveyor, dated 2d Febr'y, 1842, deposited in the office of the late L. R. Kerny, notary public in said parish of Jefferson; which said portion measures 50 feet front on Fourth street or the railroad, 8 feet deep and front on Newton street from the line of the street, and nine feet deep on the line of property of Joseph Gering.

110 A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, in the square bounded by Copernie avenue, Third, Fourth, and Newton streets, measuring 125 feet front on Fourth street, 14 feet deep on line of property of J. Hoehn, and 9 feet deep and front on Newton street, forming part of lot No. 1, as represented on a plan of H. Grant, surveyor, on the 2nd of February, 1842, deposited in

the office of the late L. R. Remy, notary public for the parish *for the parish* of Jefferson.

A certain piece or portion of ground, situate in Mechanickam, parish of Jefferson, forming part of a lot of ground designated by No. 8, on a plan made by H. Grant, surveyor, dated February 2d, 1842, deposited in the office of L. R. Remy, late notary for the parish of Jefferson, which portion measures 50 feet deep front on the railroad, with all the rights, ways, privileges, and advantages thereunto belonging.

A certain piece or portion of ground, situate in Mechanickham, parish of Jefferson, in square No. 9, bounded by Copernie avenue, Third,
111 Fourth, and Cuvier streets—said portion being taken from lot designated as No. 7, on a plan of H. Grant, surveyor, dated 2nd February, 1842, deposited in the office of the late L. R. Kerny, notary public for the parish of Jefferson; and the same measures 125 feet front on Fourth street or the railroad, by a depth of 17 feet, together with all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in any wise appertaining.

A certain piece or strip of ground, with the rights, ways, & servitudes thereunto belonging, situate in Mechanickham, parish of Jefferson, in square No. 15, bounded by Fourth, Fifth streets, Copernie avenue and Newton streets, forming part of the lot designated by the No. 22, as represented on a plan made by A. De Young, on the 23rd of January, 1857, deposited in the office of Samuel Purcell, late recorder in and for the parish of Jefferson, which piece or strip of ground measures 5 feet in the rear, adjoining property belonging to the railroad, 110 feet in depth on the remainder of lot No. 22, belonging to Zerzea, about 10 feet in depth and front on Fourth street, and running to a point up to Copernie avenue.

112 A certain tract of land situate in the parish of Orleans, on the right bank of the river Mississippi, opposite this city, and in front of the faubourg Washington—said tract of land having three hundred and seventy-five feet front on the Mississippi River, by 24 arpents in depth between parallel lines, being forty-six arpents of superficial measures, bounded above by a street fifty feet wide, called the Verrett avenue, separating said tract of land from the lands now or heretofore of the Brooklyn Warehouse Co., and below by a street called Thayer avenue, separating said tract of land from the remainder of the tract of land belonging to said Tracy Verret, together with all the improvements thereon *thereon* and appurtenances thereof; a bulkhead, two wharves, all the rights, ways, servitudes, and advantages thereunto belonging; and after giving due and legal notice to the said defendants, the New Orleans, Opelousas and Great Western Railroad Company, of the said seizure in the manner pointed out by law, I advertised the said property for sale according to law, after the expiration of the legal delay from the time of service of said notice, by advertisements announc-
113 ing the sale to take place at the entrance of the custom-house on Old Levee street, between Canal and Custom-house streets, in this city of New Orleans, on the 25th day of May, 1869, at 12 o'clock m. Said advertisements were inscribed and published in three papers in the city of New Orleans, to wit: In the Commercial Bulletin, New Orleans Picayune, and New Orleans Republican, from the 16th day of April, 1869 to the day of sale, being full thirty days from the date of the first notice given in said newspapers. Said advertisements were inserted and published in said newspapers on the 16th, 20th, 24th, & 29th of April, 1869, and on the 4th, 11th, 18th, 25th of May, 1869.

And after having further complied with and performed all the addi-

tional previous legal requisites, and after the said property had been duly appraised, I did expose the same at public sale, at auction, to the highest bidder, according to law, at the said entrance to the custom-house, on Old Levee street, between Canal and Custom-house streets, in this city, on the said 25th day of May, 1869, at 12 o'clock m., when,
114 after making due proclamation of said sale and duly crying the said property and appurtenances, the same were duly adjudicated to Charles Morgan, of the city of New York, he being the last and highest bidder thereon, for the price and sum of two millions and fifty thousand dollars, ($2,050,000,) of which said sum, according to the terms and conditions of the sale, ($686,000) six hundred and eighty-six thousand dollars and costs of suit, to wit, ($15,825,) fifteen thousand eight hundred and twenty-five dollars, were paid to me in cash, in U. S. Treasury notes, and the balance of the purchase price, to wit, ($1,348,175,) one million three hundred and forty-eight thousand one hundred and seventy-five dollars, the said purchaser, Charles Morgan, assumes the payment of in favor of the holders of nineteen hundred and eighty-seven bonds of the New Orleans, Opelousas, and Great Western Railroad Company, issued on the 1st day of April, 1859, and payable on the 1st day of April, 1889, and identified with a certain notarial act passed on the 1st day of April, 1859, between the said company and Edmund J. Forstall, and by which said assumption the said Charles Morgan is
115 bound, and by the acceptance hereof promises and binds himself to pay to the legal holders of the said bonds, or any of them, the sum of six hundred and seventy-eight dollars and forty-eight cents ($678.48) on each one of the said bonds, payable on the 1st day of April, 1889, with interest on the said sum of ($678.48) six hundred and seventy-eight dollars and forty-eight cents, at the rate of eight per cent. per annum from the (25th) twenty-fifth day of May, 1869, payable on the 1st day of October, 1869, and on the first day of April and of October of each year thereafter, as is stated and set forth in an endorsement upon each one of said bonds, printed in red ink, with the signature of F. J. Herron, late U. S. marshal, in order to identify the said bonds with this sale; and to secure the payment of the said sum, ($678.48,) six hundred and seventy-eight $\frac{48}{100}$ dollars, payable on each of the said bonds, and of the interest to accrue thereon, all of the said property so sold and adjudicated to the said Charles Morgan remains specially mortgaged and hypothecated according to the terms of the said adjudication in favor
116 of the holders of the said bonds, and each one of them, until the final and entire payment of the said sum of six hundred and seventy-eight $\frac{48}{100}$ dollars, payable as aforesaid on each of the said bonds and of the interest to accrue thereon.

And it appears from duly-certified copies from the records in the offices of the recorder of mortgages for the parishes of Orleans, St. Charles, and La Fourche, which certificates are annexed to the writ of seizure and sale, under the authority of which the above-described property has been sold, that there are none other than the following mortgages recorded against the above-described property, viz: In the parish of Orleans, B. 73, f. 85. The one granted in favor of Edmund J. Forstall, per act before Selim Magner, notary public, dated 1st April, 1859, to secure two millions dollars, interest and costs, recorded April 8, 1859, and re-inscribed in book 87, fo. 215, B. 84, f. 600. The one granted in favor of Sam. Smith or others, per act before same notary, dated 1st March, 1867, to secure the sum of one million dollars, interest and costs, recorded 24th of May, 1867.

The general one in favor of Hasam and Anderson, resulting from a

judgment rendered by the sixth district court on the 27th May,
117 1864, for the sum of $8,325.46, with interest, stipulated in said judgment and costs of suit. Recorded B. J M, No. 11, folio 313.

The general one in favor of H. L. Youngs, resulting from a judgment rendered by the parish court of St. Charles on the 9th December, 1868, for the sum of $500, with interest, stipulated in said judgment, and costs of suit. Recorded B. J M, No. 13, fo. 148.

In the parish of St. Charles, the general one in favor of H. L. Youngs, resulting from a judgment rendered by the parish court of St. Charles, on the 9th December, 1868, for the sum of $500, with interest stipulated in said judgment, and costs of suit. Recorded B. No. 1, fo. 183.

The judicial mortgage, which exists by the recording of a judgment rendered by the hon. the fifth district court of New Orleans, in the case of Louis Mestier vs. New Orleans and Opelousas Railroad Company and Ambrose Laufear, in favor of said Louis Mestier and against Ambrose Laufear for the sum of $10,000, with legal interest from the 3rd day of March, 1859, till paid, and costs of suit, which judgment was rendered on the 10th December, 1859, and recorded on the 28th February, 1860.

118, 119 The judicial mortgage which exists by the recording of a judgment rendered by the hon. fifth district court of New Orleans, in the suit of Louis Mestier vs. The New Orleans, Opelousas and Great Western Railroad and Ambrose Laufear, for the sum of $15,000 and all costs of suit, which judgment was rendered on the 28th day of June, 1864, and recorded on the 7th day of September, 1864.

In the parish of La Fourche: A judicial mortgage against said New Orleans, Opelousas and Great Western Railroad Company, in favor of Evariste Lepine, for the sum of $300, with legal interest from the 19th day of June, 1867, and costs of suit. Inscribed June 28th, 1867.

And the late United States marshall aforesaid hath, by his official authorization, directed the recorders of mortgages, in and for the parishes of Orleans, St. Charles, and La Fourche, to cancel and annul all mortgages bearing on the above described property, subsequent to plaintiff's first mortgage, which was recorded on the 8th day of April, 1859, and which said first mortgage is by the authorization of the said late U. S. marshall, diminished to the sum of one million three hun-
120 dred and forty-eight thousand one hundred and seventy-five dollars, ($1,348,175,) payable on the first day of April, 1889, with interest thereon from the 25th day of May, 1869, at the rate of eight per cent. per annum, payable semi-annually on the 1st day of April and first day of October of each year, to the legal holders of said nineteen hundred and eighty-seven bonds of the said New Orleans, Opelousas and Great Western Railroad Company.

Now, therefore, I, F. J. Herron, late United States marshall aforesaid, in consideration of the premises and by virtue of the laws in such case made and provided, do hereby sell, transfer, assign, convey, and set over unto the said Charles Morgan, his heirs, administrators, executors, and assigns, the aforesaid property and appurtenances.

To have and to hold the said property and appurtenances unto the said Charles Morgan, his heirs, administrators, executors, and assigns, to his and their proper use, benefit, and behoof forever.

In testimony of which I grant these presents under my signature as late United States marshall aforesaid, in the said city of New
121 Orleans, on this the thirty-first day of July, A. D. (1869) one

thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

(Signed) F. J. HERRON,
Late United States Marshall for the District of Louisiana.

Executed in the presence of—
(Signed) J. R. WEST.
(") JOHN FAHY.

Two thousand and fifty (2050) in internal-revenue stamps affixed and cancelled.

A true copy.
(Signed) J. B. VINOT,
Deputy Clerk.

Testimony, (taken in open court.)—Filed Nov. 3rd, 1873.

Superior district court.

STATE OF LOUISIANA *vs.* CHARLES MORGAN. } No. 2947 & " 571.

Note of evidence and testimony in open court June 3rd, 1873, by O. M. Tennison, stenographer.

Testimony of Mr. WHITNEY, continued:

122 In the session of 1870, of the State *State* legislature, an application was made by the Berwick's Bay and Texas Railroad Company for a permanent charter and right of way and franchise, and so on, necessary to build a railroad to Texas. Mr. Morgan addressed a communication to the senate and house of representatives, wherein he stated that he would guarantee that the road should be built.

(Objected to.)

Q. Take this printed pamphlet and see whether that communication, purporting to have been signed by Charles Morgan, was to your knowledge laid before the two houses of the legislature, with the accompanying bill.

A. Yes, sir; it was.

Q. At the date it purports—Jan'y 25th, 1870?

A. Yes, sir.

(This printed pamphlet of application is offered in evidence.)

(Objected to.)

(This pamphlet is filed subject to the objection, and marked A B, being an application to the legislature with a project of an act submitted to the legislature.)

123 Q. Do you remember anything else—if so, state it—showing what Mr. Morgan has done with a view to the extension of this road beyond Berwick's Bay?

A. After failing in procuring the passage of that act from the legislature, granting the necessary rights and facilities, during the following summer he purchased at sheriff's sale the rights and franchises beyond Berwick's Bay. But immediately after the failure to procure the passage of that bill, he combined with certain New York capitalists, who owned the road from Houston this way. They were represented by Kennedy—Kennedy and Behrens, New York—and they applied to the legislature here for a charter to build a road; Mr. Morgan agreeing to build to

Sabine, and they from Sabine to Houston. That bill failed in the senate. Failing in every instance in his attempts so far, he was finally induced to identify himself with the Mobile and Texas R. R. Co., and enter into an agreement with them, whereby they bound themselves to build the road to Texas in the time to which they were limited by their charter. They having utterly failed to do that, he has now entered
124 suit in chancery for the purpose of annulling their charter and the contract, and obtaining back his franchise, in order to build the road to Texas.

Cross-examined.

By the Attorney-General:

Q. You spoke of a contract with the Mobile and Texas Railroad Company. Do you know where that contract is?

A. Yes, sir.

Q. Have you got it?

A. I think it is in the hands of Mr. Taylor or Mr. Leovy; if not, it is at the office.

Q. Can you furnish it, or a copy of it?

A. Yes.

(Copy to be furnished.)

Q. Do you know the reason why Mr. Morgan was forced to make this contract with the Mobile and Texas Railroad Co.?

A. I am not aware that he was forced.

Q. Don't you know that by reason of the competition and the probability that they would build a road there, Mr. Morgan became alarmed, and thought proper to make this contract?

A. On the contrary, I am quite confident he never had any alarm.

Q. Do you know whether he made the contract?

125 A. He made it because he wanted to see the road here extended to Texas.

Q. Didn't he have the means to extend it to Texas himself? Then why combine with another company and give them that benefit?

A. Simply because that other company had all the necessary franchises, and were pretending to build the road.

Q. They had a corporation on their side, and were building a railroad parallel with his road?

A. Yes.

Q. And don't you know that Mr. Morgan, in view of what he supposed would affect his interest, was made to do this?

A. On the contrary, he did not believe it would affect his interest.

Q. Do you know why he made the contract?

A. Simply because he wanted to extend the road after having failed in his application to the legislature. His object was to extend his own road to connect with a branch to Shreveport. He wanted it as a feeder to his own road, and had a general desire to extend the road to Texas in accordance with the original charter.

126 Q. Now, did Mr. Morgan take any steps to extend the road beyond Berwick's Bay until the Chattanooga road commenced its opposition?

A. Yes.

Q. Did Morgan take any steps, lay out any money, or make any preparation to build a road from Berwick's Bay to the Texas line until this compromise was made with the Texas road?

A. Yes.

Q. After Morgan had purchased this road did he take any steps, lay

out any money, or make any arrangements to carry the road from the Berwick's Bay to the Texas line?

A. Yes; he paid $250,000 for the right of way and franchise from Berwick's Bay to commence with.

Q. When did he pay that?

A. At the sale—the sheriff's sale—some time in April, 1870.

Q. Previous to that time had he taken any steps at all to build the road beyond Berwick's Bay?

A. He induced the inauguration of a company to build a road beyond there, and subscribed two millions of dollars towards it in stock. That company, in consequence of the failure to get the necessary franchises, failed.

127 Q. Then he done nothing toward the completion of the road, except what you have stated, up to the time when he made this bargain with the Mobile and Texas road?

A. Yes; some time before the war he became identified with the enterprise, gave it his aid in the way of counsel and the loan of a quarter of a million of dollars, for the purpose of extending it beyond Berwick s Bay.

Q. I am speaking of the actual labor and money expended. I want to know that.

A. He subscribed, and paid a large portion in cash, one million and a quarter to the New Orleans, Mobile and Texas Railroad Company.

Q. That is not the same corporation as the one you advanced money to before?

A. No, sir; that is another and distinct corporation.

Q. Did he ever get any bonds of that Chattanooga road?

A. Yes.

Q. How many?

A. Something like eight hundred thousand of first-mortgage bonds, and the balance in second-mortgage bonds, a quarter of a million.

128 Q. Where are those bonds now?

A. He has them.

Q. Here or in New York?

A. I think they are here. I am not positive.

Q. How did he get them?

A. Through this contract.

Q. From whom did he get them?

A. From the New Orleans, Mobile and Texas Railroad Company.

Q. From what office?

A. Griswold—Mr. Griswold, of New York, the president of the company.

Q. Are you familiar with the bonds issued for that road, the different series?

A. No, sir; I cannot say that I am.

Q. You remember this two million five hundred thousand subscribed by the State, under an act of the legislature, of stock to that road?

A. I believe there was that amount subscribed by the State.

Q. You understood that?

A. Yes.

Q. Has Morgan any portion of those bonds?

A. No, sir; not a dollar.

Q. Did you ever see any of those bonds?

A. I never did.

129 Q. Are you familiar with the second-mortgage bonds endorsed by the State?

A. Somewhat.

Q. Has he any of them?

A. I think in the neighborhood of two hundred and eighty thousand or three hundred thousand dollars.

Q. Where did he acquire those bonds?

A. Immediately on making this contract between himself and the New Orleans, Mobile and Texas Railroad Company.

Q. What consideration did he give for them?

A. Part cash, this graded portion of the line beyond Berwick's Bay to Texas, with the understanding that it should be completed, and other property.

Q. He sold out, then, the portion of the road to this company that had been graded, and took the bonds in payment?

A. Yes; that was the contract, with certain conditions.

Q. Now, you are familiar with the trade of this city from here to Texas?

A. Somewhat.

Q. Don't you know it was not to the interest of Morgan, owning a road from here to Berwick's Bay, and owning the vessels em-
130 ployed in carrying on the trade from there, having a monopoly, that he would derive evidently more profit by the road terminating at Berwick's Bay, and by the use of his vessels from there to Texas, and that he would derive much more profit by not having the road completed?

A. No, sir; for the reason, I have conversed with Mr. Morgan and know his ideas and views.

Q. I am not asking you his ideas and views. You are familiar with the trade to Texas; don't you know that Morgan, keeping the road precisely where the road now terminates, with the employment of all his vessels in carrying on the trade from Berwick's Bay—don't you know that he would derive infinitely more profit by having the road terminate where it is?

A. If Texas was to stand still and no immigration go into there, yes. But my view is that Texas is increasing so rapidly, that all the railroads completed will not keep pace with Texas; and Mr. Morgan's business would not be hurt by the railroad proposed. I think it would be a benefit to him.

131 Q. Would he not have derived much more profit for the time being, for years to come, from the road as it now is?

A. I think not.

Q. Do you know any railroad in the State that pays a dividend?

A. I don't know that I do.

Q. Do you know any railroad in the South that the stock is not far below par?

A. No, sir; I don't know that I do.

Q. Don't you know that they are all under par?

A. No, sir; I don't know that.

Q. Do you know what the value of the stock of the New Orleans, Jackson and Great Northern Railroad is?

A. I do not.

Q. Don't you know that it is almost considered worthless?

A. I suppose so; I could not swear to it.

Q. What is the reason? Is it not because the trade is not sufficient to afford any premium or profit to run it?

A. It may be, or to causes transpiring during the war that empoverished it, or to mismanagement.

Q. Is not the trade at present from here to Texas as carried on by Morgan profitable?

A. Yes, sir.

132 Q. Will you be kind enough to tell what profit he derives on an average from the capital invested in that trade?

A. The capital invested? If he had to pay insurance on his vessels, there would be very little profit.

Q. You say it is profitable?

A. Yes, sir; simply because he is his own underwriter.

Q. Exactly; and don't he derive considerable profit from it?

A. Reasonable profit.

Q. Do you know any railroad in the South that derives the same profit?

A. I don't know any railroad managed by one man that has the capacity to manage that Mr. Morgan has. The difficulty with corporations is, they are eaten up by too many managers.

Q. He did not propose to retain the management of the extension under that contract?

A. He proposed to retain the management of his own road.

Q. But he did not propose to manage and control the road west of Berwick's Bay? That was not part of the contract?

A. No, sir.

Q. The Chattanooga Railroad Company was to have that control?

A. It was contemplated that it should be managed by one of
133 his agents, of which I am one. We should have the entire management at this point.

Q. That is, from Berwick's Bay to here?

A. I mean from Berwick's Bay to any point to which the road would be built—to Houston.

Q. There is nobody managing this road from here to Berwick's Bay but he?

A. He is owner and director.

Q. The State has nothing to do with it?

A. No, sir.

Q. It owns no interest in it?

A. No, sir.

Q. Has no possible control of it?

A. Not that I am aware of.

Q. What was your object after you had bought this transfer at sheriff's sale; to apply to the legislature?

A. We applied before we bought.

Q. You did not consider, then, that you had any right to go on and build that road?

A. Not beyond Berwick's Bay.

Q. You were brought to a standstill?

A. Yes.

Q. You had no contemplation to go on?

A. Yes; it was with that view the company was organized.

Q. As Charles Morgan's agents, you had no intention to go on
134 and finish the road to the Texas line until you could get a company in act of incorporation?

A. As Charles Morgan's agents, we used every effort for months and months to organize a company to apply to the legislature for the necessary franchise.

Q. You made no preparation to carry on the road as it stood?

A. We had no right beyond Berwick's Bay, until we bought from the (Opelousas) Railroad Company the franchises.

Q. That was your idea, then?

A. Yes.

Q. To get possession of that franchise?

A. Yes.

Q. You bought the first branch in 1869, and this in 1870?

A. Yes.

Q. Did Charles Morgan have a mortgage on that road?

A. The balance that the company owed him was applied to the purchase of the balance of this franchise.

Q. Why was it not all applied for in the original suit?

A. The road was only mortgaged on its completed portion. Mr. Morgan was the owner of first-mortgage bonds, and the road being sold under a foreclosure, he became purchaser. And his debt not being
135 satisfied, at a subsequent sale in 1870 be became purchaser of the extension.

Q. Under the same decree?

A. No; one was in a State court and the other in the United States court.

Q. Why did you not bring it in the same court?

A. You will have to refer to our lawyer for that.

Q. You divided your claim?

A. No, sir.

Q. Mr. Morgan is a great capitalist?

A. Yes; he paid six hundred thousand dollars more for the road, in order that the people might be benefited.

GEORGE PANDELY sworn for defendant.

Q. You have heard what Mr. Whitney said?

A. Yes.

Q. You are superintendant of the New Orleans and Texas Railroad, from here to Brashear City?

A. Yes.

Q. How long have you held that position?

A. Since the 25th May, 1869, the day after the purchase.

Q. You have heard the testimony of Mr. Whitney and heard the testimony of Mr. Hutchinson?

136 A. I have heard all the testimony of Mr. Whitney, and corroborate it in every particular.

(It is admitted that the defendants protested against the assessment of the property, both on legal grounds and on the ground of overvalue, both in 1870 and 1871.)

Q. Look at the description of the piece of land on the other side of the river.

A. This is a correct description of the property owned by Mr. Morgan there.

Q. Is it a correct description of the property it purports to be?

A. It is a piece of property (reading) "To the line of Jefferson Parish, forty arpents." He owns no such property. He owns about twenty-four arpents.

Q. What did it cost?

A. Twenty-five thousand dollars, about, at the time the railroad was inaugurated. It cost the Opelousas Railroad that.

Q. Is it used for railroad purposes?

A. Exclusively.

Cross-examined:

Q. Is the real estate along both sides of the road?

A. No; it is a piece of ground where the railroad yard is, to put in machinery, and so on.

137 Q. Is it needed for the buildings of the railroad?

A. Yes. Mr. Morgan owns about one-half of what is described in that petition. The balance belongs to private individuals.

Re-examined:

Q. What is the name of the two steamers?

A. The Porter and Lucretia, I believe—ferry-boats.

Q. Used exclusively in connection with the railroad?

A. Yes; to transport passengers and freight over.

Q. When was the gage changed?

A. We commenced upon the 22nd of July, the 20th of July last year.

Q. What did it cost to change the gage and the railroad stock?

A. I would have to look over the accounts. I can give a rough statement—somewhere between a hundred and ten and a hundred and forty thousand dollars.

Q. What was the gage changed for? What was the motive?

A. It was changed from five feet six inches to four feet eight and a half, and Mr. Morgan had agreed with the New Orleans, Mobile and
138 Texas Railroad that they should start from his terminus at Brashear City and he would meet them there. Their gage was four feet eight, and he made his to conform to it.

Q. It was to meet that portion of the road beyond Brashear City?

A. Yes; there was no other purpose.

Cross-examined:

Q. The road is standing just where it was when he changed the gage?

A. Yes, sir.

G. W. R. BAYLEY sworn for defendant.

Q. You were superintendent of the New Orleans, Opelousas and Great Western Railroad, were you not?

A. I was at one time.

Q. You were prior to the sale to Mr. Morgan?

A. From 1866 until the sale.

Q. Do you know what was done by the railroad company to extend it beyond Brashear City?

A. By the old company, yes, sir. They located the whole line to the Texas boundary, the Sabine River; they graded it, nearly com-
139 pleted the grading, and a portion of the bridging from Berwick's Bay to Opelousas. The work extended to that district, and in some places it was quite finished. They also acquired the right of way, purchased lands for depots and stations, and acquired some by donation, and did various works.

Q. What effect did the war have on these operations?

A. It put an end to them.

Q. What was the cause of their not finishing this road?

A. I consider that the cause of the non-completion of the road was the result in consequence of the war.

Q. As far as you know, the company made every effort to comply with their contract to build the road to Washington, on the Sabine?

A. I consider that they did everything that was possible for them to do.

Q. Was there any intention on their part to abandon the road at Brashear at all?

A. The old company, you mean? No, sir.

Cross-examined:

Q. How much has been the land the old company got? How much did the State give them?

140 A. The State gave them no land at all, except you mean the United States grant.

Q. That was given to the State?

A. Yes; in that sense it was given to the State for the use of the company.

Q. How much of it was realized of that grant?

A. The total amount of acres approved to the company was about seventeen hundred and nineteen thousand.

Q. That they sold?

A. No.

Q. A portion of it was sold?

A. A very small portion was sold.

Q. Do you know how much was sold?

A. Less than a thousand acres.

Q. The balance has reverted to the Government?

A. Yes.

Q. By the non-compliance with the terms of the grant?

A. By the non-completion of the road within the time specified. It was limited to ten years from the date of its approval. The grant was approved on June 3rd, 1856; therefore the time expired June 3rd, 1866.

Q. What steps did the company take after the close of the war in 1865? Did they take any steps to build the road beyond Brashear?

141 A. Yes; the first thing they did was to endeavor to get the road bank from the United States authorities, who held possession. They only succeeded on the first Febry., 1866.

Q. After 1866, up to the time of the purchase by Mr. Morgan, what work did they do?

A. There was no work done after 1866 beyond Brashear.

Q. No money laid out beyond that point on the road?

A. No, sir.

Q. The road was insolvent; in other words, the company was insolvent, so far as means were concerned?

A. The company had paid, previous to the sale, nearly every dollar, except the interest on the bonded debt; it was unable to pay that.

Q. It did not have the means to meet their obligations?

A. It had not the means to meet the interest on the bonded debt; it had means to meet everything else—all the old debts.

Q. What do you mean by the bonded debt?

A. I mean the first-mortgage bonds.

Q. How much stock had the city or State?

142 A. The city had a million and a half; the State had paid on account six hundred and fifty thousand dollars. I don't consider the State owned any stock.

Q. Had she paid any bonds?

A. She issued bonds on account of her stock subscription.

Q. Where are those bonds?

A. Disposed of.

Q. How; by the company?

A. Yes.

Q. They were issued for the stock of the company?

A. By the terms of the charter no one can be entitled to stock until it is fully paid. The State subscribed twelve hundred thousand dollars; she paid in six hundred and fifty thousand dollars thereof; the State was not entitled to any stock; she issued six hundred and fifty thousand dollars in bonds on account of her subscription.

Q. And those bonds were sold for the benefit of the company to build the road?

A. Yes; for the benefit of the company to build the road.

Q. What interest has the State now in that road?

A. I don't consider she has any.

Q. Has the city any?

A. None.

143 Q. How did she pay her stock?

A. In bonds.

Q. You used them in the road?

A. The company used them; that is, the proceeds.

Q. They are all gone?

A. So I understand.

Q. So the city had a million and a half, and the State had paid six hundred and fifty thousand; that makes $2,150,000?

A. Yes.

Q. The State and city are paying interest on those bonds?

A. They used to.

ey have no interest in that road now?

A. No, sir.

Q. Either this side or beyond Berwick's Bay?

A. Nowhere.

Q. You were engaged on the Chattanooga Road?

A. Yes.

Q. You were running that road rather in opposition to Mr. Morgan?

A. The company was.

Q. There was a fight between them?

A. There was an opposition line between New Orleans and Mobile.

144 Q. That fight led to a compromise between Mr. Morgan and the Chattanooga Road?

A. Yes.

Q. Do you know that Morgan thought that it would be to his interest to make that arrangement?

A. I don't know what Mr. Morgan's motives were; but I am satisfied it was to his interest to continue the opposition, because he had much the best of it.

Q. He had more money?

A. Yes. I believe if he had continued the opposition two months more he would have ran them out, broken them up.

Q. Do you think if he had known that, he would not have persevered?

A. That is a matter of opinion.

Q. You are and old citizen and well acquainted with the trade. After Morgan bought the road from here to Berwick's Bay, with his vessels running from there, don't you believe it would have been to his interest to stop the road precisely where it was?

A. I don't think it would. If you will permit me to give you my reasons: On the assumption that no railroad ever would be extended to Texas from any other quarter, and that Mr. Morgan would always

145 enjoy the entire monopoly of the *the* Texas trade, and that every traveller there would be bound to take the road from here to

Brashear, and take his steamers from there—taking that view of it, it would be to his interest not to extend it. But as recent roads were built from St. Louis to Texas, and therefore it is to Mr. Morgan's interest to have a road there.

Q. But up to the time when St. Louis had not build any road—at the time Mr. Morgan acquired the road, and in view of the trade Mr. Morgan had, and the monopoly he had—you know he had a monopoly of the trade to Texas?

A. Yes, from New Orleans.

Q. Don't you know no other line could compete with him? He would run them out.

A. Yes, he had the power.

Q. Now, in view of that fact, and before this St. Louis stretched out her arms, extending her improvements, and waked up the people here, do you think Mr. Morgan ever contemplated such a result as that?

146 A. I don't know what Mr. Morgan contemplated. But before the war there were roads pro'pected to Texas. The Vicksburg road was one. There was a road from Memphis via Fulton, was partially built; and from Memphis and Cairo, but not from St. Louis.

Q. Don't you think for the time being it was to Morgan's interest to let the road stop there at Berwick's Bay?

A. My opinion was that he should have extended it; therefore I could not think it to his interest not to do it. I think the results have shown I was correct.

Q. Are you not satisfied that Morgan makes better profit from his carrying trade now than he would if the road was extended?

A. No, sir. Mr. Morgan has made a very large profit with them; but the completion of the Missouri and Texas Railroad has changed that. If Mr. Morgan had continued the road, he would have earned more money than on his ships. He did not consider his interest by not doing it.

Q. Do you think Mr. Morgan would have waked up to those ideas if the Chattanooga and Texas Railroad had not intruded here and encroached on his domain?

A. I can only judge by his acts.

147 *Pamphlet A B, offered by defendant and filed June 3rd*, 1873.

To the honorable the senate and house of representatives of the State of Louisiana:

The importance of a railroad communication between the city of New Orleans and the State of Texas, and the fruitful districts of country on the Red River, cannot be too highly estimated. How much of public attention has for a long time been directed to the subject, and what amount of debt has been already entailed on the people of the city of New Orleans and of the State in an unsuccessful attempt to bring it about, is familiar to all. The failure of that attempt, it is well known to you, led last year to the sale of the completed portion of the railroad which had been begun many years ago for the purpose of establishing that communication, and I became the purchaser of it. That portion of road extended from the city of New Orleans only to Berwick's Bay, a distance of eighty miles, leaving a distance of some two hundred miles yet incompleted. Soon after I became the owner of the completed

148 portion of the projected road, being impressed with the many advantages which would be secured to the people of Louisiana and of Texas, and of States to the east of Louisiana, by the completion

of the projected road, I proposed to the public through the newspapers, over my own signature, that a new corporation should be formed and organized, in the usual manner, for entering on and completing the work of building, equipping, and running a railroad beginning at the terminus of the existing railroad, at Berwick's Bay, and to extend it to the State of Texas by the most eligible route; that this new corporation should have a cash capital of $4,000,000; and promised that I would thereupon take capital stock in the company to the amount of $2,000,000.

The Berwick's Bay and Texas Railroad Company was organized under the laws of Louisiana for the organization of corporations for works of public improvements and utility, to have a capital of $4,000,000, and I at once subscribed for $2,000,000, in the hope that others who had a common interest with myself in the prosperity of Louisiana would come forward and take the remainder of the stock. But in this I was
149 disappointed. Only a little over $175,000 of the remainder of the stock has been subscribed for. This failure to subscribe for stock, I am informed and have reason to believe, is not attributable to any indifference on the part of the people of the city and State to the carrying on and completion of the projected work, but to the want of capital in the country which can be spared from the ordinary operations of the business world of Louisiana.

From what I have seen and heard I can readily believe this. It is apparent to all that there is a great deal of embarrassment among the business men of the country; and it unfortunately true that this condition of embarrassment is not confined to individual citizens. Who does not know that the finances of the city of New Orleans and of the State of Louisiana are at this time in a most deplorable condition?

Both the State and city are burdened with debt. The obligations already issued by them are, in every market, in a state of lamentable discredit; and it is clear to my mind that the embarrassments which oppress all business men and business operations among us can-
150 not be got rid of until the credit of the city and State is re established; and it may well be asked, how is this to be done? Most certainly not, in my judgment, by making further additions to the issue of State bonds.

On my arrival here on Saturday last I find that a railroad company chartered by the State, and to which a subsidy in State bonds has already been granted by the State to aid it in building a road to extend from the city of New Orleans to Texas, to the amount of $12,500 a mile, was pressing the legislature to pass a bill which, among many most extraordinary and objectionable provisions, provides for the saddling the State, in addition to the debt to be contracted for the benefit of this railroad company, with a farther issue of State bonds to the amount of $4,000,000, which are to be granted to the company as a bonus or mere gratuity for building the road in question, and takes away from the city of New Orleans, without any compensation whatever, such an amount of the property of the city, acquired at the expense of the people
151 of the city, as would, if sold at a fair price, bring an amount sufficient to liquidate a large portion of the city debt. Under these circumstances, and for the purpose of aiding in the construction of a railroad which will open a continuous communication between the city of New Orleans and the State of Texas and the country on the Red River, I am willing, if the bill which follows this communication be enacted into and become a law, to take all the remaining capital stock of the Berwick's Bay and Texas Railroad Company which is not taken by other persons within ten days after the passage of the act, and to

guarantee the entire completion of the proposed railroad within the period of three years from the date of the passage of the bill, as stipulated and provided for in sections 7 and 8 of the bill.

CHARLES MORGAN.

NEW ORLEANS, *Jan'y 25th*, 1870.

Bill referred to in foregoing letter of Chas. Morgan.—Filed 3rd June, 1873.

AN ACT to incorporate the Berwick's Bay and Texas Railroad
152 Company, and to expidite the construction and maintenance of a railroad, to establish an easy, rapid, and permanent mode of communication between the city of New Orleans and Texas and the districts of country on the Red River.

Whereas Charles Morgan, Lafayette Folger, William M. Perkins, Adam Thompson, James Jackson, William B. Schmidt, Cyrus Bussy, Joseph R. West, Miles Taylor, Jno. J. Adams, Samuel Smith, L. F. Generes, A. Carriere, Wm. T. Hepp, Jules A. Blane, Henry Boyce, David McCoard, John Davidson, and others formed and organized themselves into and constituted a corporation by the name of the "Berwick's Bay and Texas Railroad Company," under the laws of Louisiana, and especially under the provisions of the act entitled "An act for the organization of corporations for works of public improvement and utility," approved March 14, 1855, for the construction, equipment, running, working, and maintenance of a railroad as set forth in the "charter of incorporation," framed and adopted by them on the twelfth day of November, eighteen hundred and sixty-nine, which is in the following words:

153 *Charter of incorporation.*

First. The said corporation shall have and be known by the name of the Berwick's Bay and Texas Railroad Company, and its domicil is hereby established at the city of New Orleans.

Second. The said corporation is formed for the construction, equipment, running or working and maintaining a railroad, beginning at the terminus, in Brashear City, of the railroad constructed by the New Orleans, Opelousas and Great Western Railroad Company, from Algiers to Brashear City, and to extend thence by most eligible route to the State of Texas, with a branch or branches to form connections with the district of country on Red River, for the transportation of freight and passengers, for the benefit and advantage of the stockholders, as well as for the public, and which said railroad shall be constructed in such a manner that it will be fitted to serve for the main trunk of a line of railroad to be continuous between the city of New Orleans, Texas, and the States on the Pacific Ocean.

Third. The capital stock of the corporation shall be four mil-
154 lions ($4,000,000) of dollars, divided into forty thousand shares of one hundred dollars each. A payment of two and one-half per cent. on the amount of each share of stock shall be made at the time of subscribing. The payment of the remainder of the amount of the stock subscribed for to be made in such sums, and at such times, as shall be determined on and fixed by the board of directors. No call shall be made at any one time for more than ten per cent. on the amount of stock subscribed for, and no more than one call shall be made within any one period of thirty days; and a notice of thirty days of the call made for the payment of any such sums shall be given to the stockholders by a publication made in one newspaper of the city of New Orleans, which shall

have been selected by the board of directors and made known to the stockholders as the official paper of the corporation. Provided, that no call shall be made upon the stock, except the original subscription of two and a half per cent. until the company shall by contract or legislation become possessors of perpetual rights and franchises, as pro-
155 vided for in article 13 of this charter. If there shall be a failure on the part of any subscriber to pay the installment on his stock when called for by the board of directors for more than thirty days after the time fixed for the payment of said installments and stated in said notice, then and in that case the stock, with the sum or sums previously paid, may be sold for account of said stockholder, after thirty days' written notice to him, and after being advertised ten days in the official paper of the corporation.

Fourth. The said corporation shall be organized and go into operation as soon as shares of stock to the amount of one million of dollars shall have been subscribed.

Fifth. The management of the affairs and business of the corporation shall be carried on and conducted by a board of five directors, to be composed of five members, who shall be stockholders of the corporation, and they shall be chosen at an election, held after due notice given under the authority of the charter of the incorporation, by the votes of the majority of the stockholders voting at said election. The directors elected by the stockholders shall elect one of their own number at their
156 first meeting to be president of the company and of the board of directors. The president of the company is the officer designated as the one on whom legal service of all process or citation against the company may be made, and the company agree to be bound by service of process or citation, whether made on the president or left to his ad'ress at the office of the company.

Sixth. The first board of directors shall be chosen as soon as stock to the amount of one million dollars shall have been subscribed. The election shall be held at the time and place designated by the commissioners charged with receiving subscriptions, hereinafter designated. Notice of this election shall be given by publication made fifteen days in advance, in two newspapers published in New Orleans. The first election shall be held under the superintendence of three of the commissioners aforesaid; subsequent elections shall be held under the superintendence of three commissioners to be appointed by the board of directors from among the stockholders. At all elections by the stockholders, and at all their meetings, each share of stock shall be entitled to one vote. After
157 the first annual election all shares of stock must be owned and possessed by the voter in his own right, or by his principal, if held by proxy, sixty days before being voted on. The first board of directors shall hold office until the first day of January succeeding their election. The elections shall be annual thereafter, and each subsequent board shall be elected on the second Monday of December. A failure to elect directors shall not dissolve the corporation, but the board in office shall continue the exercise of its functions until a new board can be elected. All notices of meetings of stockholders and of elections, after the first election above provided for, shall be given by publication in the official paper of the company, published in New Orleans. Any vacancy in the board of directors occurring during the year may be *be* filled by the remaining directors.

Seventh. The following persons are hereby appointed commissioners for the purpose of receiving subscriptions to the stock of said corporation, viz:

Commissioners.—Jules A. Blanc, Joseph P. Coulon, Samuel Smith, George Jonas, L. J. Webster, E. A. Tyler, E. H. Harris, Chas.
158 Cavaroe, A. M. Fortier, A. Carriere, C. H. Slocomb, J. H. Peel, David Wallace, N. Williamson, William M. Perkins, Alfred Moulton, L. F. Generes, Wm. T. Hepp, Henry Boyce, H. Frelson, Thos. Simms, Adam Thompson, John G. Gaines, Wm. B. Morris, Thomas Sloo, Walter Huntington, Edward Rigney, Charles Roman, Paul Fourchy, A. Chiapella, Thomas A. Adams, Charles Briggs, D. Michel.

Eighth. The stockholders in the said corporation, when organized by the election of directors, as prescribed in the preceding articles, shall, as specially provided in the said act, approved 14th March, 1855, and by virtue of and under the authority of the said act, become a *a* body corporate and politic, and shall have and enjoy succession as corporation, by the said corporate name of The Berwick's Bay and Texas Railroad Company, for a period of twenty-five years from the day of the said organization, with full power and authority to contract and to sue and be sued in its corporate name; to make and use a corporate seal; to purchase, hold, and receive, and to convey, under its corporate name,
159 property, both real and personal; to name and appoint such managers, directors, and officers as their interest and convenience may require; and to make and establish such by-laws for the proper management, conduct, and regulation of the affairs of the said corporation as may be deemed necessary and right, and are not inconsistent with the provisions of the said act.

Ninth. The president and directors of the corporation shall have power to adopt and make a corporate seal for the said corporation, and to use the same; to select a newspaper published in the city of New Orleans, which shall be known to the stockholders as the official paper of the corporation, and in which all the notices and advertisements required to be given and made for the information of the stockholders shall be published in the usual manner; to name, appoint, and employ such officers, agents, engineers, and mechanics, workmen, and laborers as may be necessary, convenient, and useful in the prosecution of the object for which the corporation is established, and for the ordering and carrying out of the purposes had in view and mentioned in this
160 charter of incorporation, and for the proper and successful transaction of its business; to make all contracts of every kind necessary for the purpose of constructing and equipping said road, and generally in relation to everything necessary in and requisite for the construction, maintenance, and working of the said railroad; and to make by-laws for the proper management of the affairs of said corporation, subject to the approval of the stockholders, to be obtained at a meeting convened for that purpose.

Tenth. Special meetings of the stockholders shall be called by the president at any time, on the written request of stockholders holding one-eighth of the stock of the company.

Eleventh. If before the expiration of the term of twenty-five years from the day on which the present charter of incorporation take effect, by the organization of the corporation, under the provisions of article sixth, six or more of the stockholders holding a majority in amount of the capital stock of the corporation shall desire to renew the said charter of corporation for a further term, the stockholders unwilling to renew the same shall be bound to transfer the shares of stock held by them to those desiring the renewal, at the then market-value of
161 the said stock, or if the stock has not a known market-value at the time such transfers shall be made, the value of the said

stock shall be fixed by two appraisers, one to be chosen by the stockholders desiring to renew the charter of incorporation, and one by the stockholders who are willing to renew the same; and in the event of a disagreement between the appraisers so chosen, then the two appraisers shall choose an umpire, whose decision shall be final.

Twelfth. Should the present charter of incorporation not be renewed, as provided for in the preceding article, then on the fourth Monday before the expiration of the said term of twenty-five years, there shall be a meeting of the stockholders of the said corporation, at which three commissioners shall be elected by the stockholders present or represented at said meeting, whose duty it shall be and who are hereby specially authorized and empowered to take possession of the property of the said company, and to conduct the business of the liquidation of the affairs of the said corporation in the manner prescribed and laid
162 down by the stockholders at a meeting held for the election *for the election* of the said commissioners.

Thirteenth. The president and directors of the corporation are hereby specially authorized and empowered to obtain, by contract or contracts entered into and made by them in any of the ways or modes known to the law, the possession and control of the charter, property, and of the rights, franchises, and appurtenances of any corporation having an existence under and by authority of the laws of the State of Louisiana, and which will or may enable the stockholders of this corporation to hold, exercise, and enjoy in perpetuity all the rights of a body corporate and politic, the members of which succeed each other, so that the body always continues the same, notwithstanding the change of the individuals which compose it; and to hold, exercise, and enjoy in perpetuity the rights and franchises granted by law for the construction, equipment, running or working, and maintaining of a railroad, as set forth and described in the second article of this charter of incorporation, or if they deem it more advisable to apply to the legislature
163 of the State of Louisiana to obtain a charter of incorporation for the stockholders of the said corporation, by a special act of the said legislature, with a grant in perpetuity of rights, privileges, and franchises, as extensive and advantageous in all respects to those heretofore granted by the legislature to any company or corporation whatsoever, organized for the purpose of constructing, equipping, running or working, and maintaining a railroad within the State of Louisiana; and also to apply and obtain from the Congress of the United States a grant or grants of lands, of rights of way, or of any other matter or thing which the said Congress may be competent and willing to accord to the said corporation or to the stockholders of the said corporation, in their collective and corporate capacity.

"It being well understood between the persons subscribing for capitla stock in this corporation, that no engagement with reference to the construction of the proposed railroad shall be made until all the shares of the capital stock shall have been taken; it is hereby expressly provided that no call shall be made on the holders of the shares of stock beyond
164 the two and a half per cent., to be paid on subscribing for the same, until all the shares of said capital stock shall have been subscribed for."

Fourteenth. The stockholders of the corporation shall have full power and authority, at a meeting of the stockholders specially called for that purpose, and after thirty days' notice of the said meeting shall have been given in the official paper, to make any modification, additions, or changes in this charter of incorporation, or to dissolve the corporation by

a vote of the stockholders holding three-fourths of the capital stock represented at said meeting; and it is hereby made the duty of the president and directors of the said corporation to have any such modification, addition, change, or resolution to dissolve the corporation forthwith published and recorded, as required by the fourth section of said act approved 14th March, 1855.

SECTION 1. Therefore, be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That the stockholders of the Berwick's Bay and Texas Railroad Company aforesaid are hereby specially incorporated and created a body politic and corporate, by the name of the Berwick's Bay and Texas Railroad Company aforesaid, are hereby specially incorporated and created a body politic and *and* corporate by the name of the "Berwick's Bay and Texas Railroad Company," and as such shall have perpetual succession, with all the rights, powers, and privileges and immunities belonging to corporate bodies, vested in them by their before-recited charter of incorporation, which is made a part of this act, and which said rights, powers, privileges, and immunities are hereby expressly ratified and confirmed in favor of the stockholders, and are made perpetual.

SEC. 2. Be it further enacted, & *etc.*, That there is hereby granted to the "Berwick's Bay and Texas Railroad Company" the right of way through all lands belonging to the State of Louisiana, to the width of seventy-five yards, for the construction and maintenance of its railroad and branch or branches; and also such State lands as may be required, on which to construct turnouts, depot-buildings, machine-shops, and cattle-pens; and the said company is hereby authorized to take and use any timber or other material required in the construction of the aforesaid railroad and branches, from any lands belonging to the State of Louisiana, within five miles of the routes thereof; and furthermore, should the said company acquire, by grant or purchase, other railroads or parts of railroads, or rights of way or franchises appertaining thereto, which they are hereby authorized and empowered to do, the same shall be merged into and become part of the Berwick's Bay and Texas Railroad Company.

SECTION 3. Be it further enacted, etc., That the Berwick's Bay and Texas Railroad Company, in any bridge which may be constructed upon the located line for its railroad, over and across Berwick's Bay, shall have a well-constructed and suitable draw therein, which, when open, shall give a clear space of not less than eighty (80) feet, for the passage of vessels; and the said company shall at all times open the said draw for all vessels requiring the same, except during and for ten minutes prior to and after the time of the passage of the railroad-train of said company; and the said company shall not be required to construct a draw in any bridge over and across any other stream or bayou on the line of its railroad between Berwick's Bay and the State of Texas.

SEC. 4. Be it further enacted, etc., That whenever the Berwick's Bay and Texas Railroad Company cannot agree with the *with the* owner or owners of any land which may be required for the construction of the said railroad, or the works connected therewith and requisite for the use of the same, it shall be lawful for the said corporation to obtain the said property required for the construction of the said road or of the said works, by proceedings for the expropriation of the same as provided by law.

SEC. 5. Be it further enacted, &c., That the said company is author-

ized and empowered to carry persons as passengers and property as freight upon the said railroad, or branch or branches, or either of them, and to receive as compensation therefor such rates of fare for the transportation of passengers, and such rates of freight for the transportation of property, as may be, from time to time, determined upon
168 and fixed and established by the directors of the company.

SEC. 6. Be it further enacted, etc., That the capital stock of the said company shall be exempt from all taxes, State, parish, or municipal, and that the said railroad and its other works, its depots, workshops, warehouses, fixtures, rolling-stock, and all other appurtenances, thereunto belonging, shall in like manner be exempt from taxation for ten years from and after the completion of the said railroad.

SEC. 7. Be it further enacted, etc., That for and in consideration of the construction, equipment, putting into actual operation, and running a railroad, to begin at Berwick's Bay and extending to the State of Texas, within a period of three years from the date of the passage of this act, by the said "Berwick's Bay and Texas Railroad Company," with their own funds, and without receiving pecuniary aid of any kind from the State, the State of Louisiana promises and binds itself, and hereby pledges its faith—

1st. That it will not grant to any railroad to be built or extended in that portion of the State lying between the Mississippi River and
169 Texas and south of Red River, any further aid by subsidies in the shape of bonds issued by the State, or the payment of which, or of the interest to accrue thereon, is guaranteed by the State, or of money, or of any other property other than so much of the public lands belonging to the State as may be required for road-beds, turnouts, depots, warehouses, and other buildings necessary for the running of railroads;

2nd. That it will not pass any act authorizing the expropriation, in favor of any railroad or railroad company, of any property, rights, or franchises belonging to any railroad or railroad company established and in operation in this State, further than is or may be necessary to enable such railroad or railroad company in whose favor the expropriation is to be made, to cross the track or tracks of the railroad company established and in operation in the State at such points and in such manner as will occasion the least inconvenience or injury to the railroad or railroad company whose track or tracks are to be crossed; and

3rd. That inasmuch as the said Berwick's Bay and Texas Rail-
170 road Company is designed to make a part of a line of continuous railroad communication between the city of New Orleans and *and* the State of Texas, in connection with "Morgan's Louisiana and Texas Railroad," the State authorizes and empowers the city of New Orleans and the parish of Orleans, right bank of the Mississippi River, to grant, cede, and donate to Charles Morgan, the successor of the "New Orleans, Opelousas and Great Western Railroad Company," in addition to the grant contained in Ordinance No. 1492, new series, approved July 15, 1869, such other portions of the banks of the river and of the land adjacent thereto as may be necessary or convenient for the transportation of freight and passengers, in cars or otherwise, across the Mississippi River.

SEC. 8. Be it further enacted, etc., That if the said Berwick's Bay and Texas Railroad Company shall fail to construct the said railroad, and to equip and put the same into actual operation in the term of three years from the passage of this act, as provided for in the preceding section, then, and in that case, the said company shall forfeit the fran-

171 chises herein granted to them; provided always, that the said penalty shall not be incurred by the said company for any failure to complete the said road as before stipulated, in the term of three years, growing out of the operation of causes over which the said company can have no control, such as the prevalence of epidemics, the occurrence of inundations, or the existence of obstacles interposed by the action of courts or by the violence of men.

SEC. 9. Be it further enacted, etc., That all laws or parts of laws conflicting with this act are hereby repealed, and this act shall take effect on and after its passage.

Contract marked "C," offered Nov. 3rd, 1873, in open court.

(Copy.)

Memorandum of an agreement made the twelfth day of December, eighteen hundred and seventy-one, between Charles Morgan, of the first part, and the New Orleans, Mobile and Texas Railroad Co., of the second part.

First. The said Charles Morgan agrees to sell, convey, and transfer to the said R. R. co., and the said co. agrees to purchase from
172 him, for the price of seven hundred and ninety-seven thousand eight hundred dollars, ($797,800,) to be paid in the manner hereinafter provided, the 5,078 shares of the capital stock of the Ponchartrain R. R. Co., belonging to him and his steamers called the Laura and the Frances, with their engines and machinery, tackle, apparel, and furniture, and all their appurtenances, and the wharf and wharf property in the city of Mobile owned by said Charles Morgan, including and to include all the wharf property in Mobile owned by said Charles Morgan, with the appurtenances thereof, all of which things are sold and to be conveyed by said Charles Morgan, with a good title free and clear of all incumbrances, his wife uniting in the conveyance of the wharf property if the parties of the second part, under the advice of counsel, so require, and the same are to be conveyed, transferred, and delivered over as soon as the proper legal instruments therefor can be prepared, for doing which the said Charles Morgan shall give at once the proper directions; the delivery of the steamboats to be made in Mobile or New Orleans, to representatives or agents thereof, the parties of the second part, and until such delivery is made the boats with their appurtenances to
173 be at the risk of said Charles Morgan.

Second. The said Charles Morgan agrees to sell, transfer, and convey to said R. R. co., and said co. agrees to purchase from him, for the price of $250,000, with interest at the rate of 8 per cent. per annum on that sum from April 15th, 1870, to be *be* paid in the manner hereinafter provided, the franchises, rights, and privileges now owned by said Charles Morgan for the construction and maintenance of a line of railroad running from Brashear City northwestwardly, so as to connect with the main line of railroad of the N. O., M. and T. R. R. Co., at or near Vermillionville, and thence northwardly to the Red River, together with all the lands and rights of way for and in respect of such railroad from Brashear City northwestwardly to such point of connection at or near Vermillionville, and likewise for a railroad north of that point to the Red River, which said Charles Morgan now owns or is entitled to, and the benefit of all work heretofore done, and improvements heretofore made upon the same in the shape of grading or otherwise,

and all the property and rights whatsoever appertaining to or procured for the purposes of such railroad from Brashear City northwest-
174 wardly and northwardly as aforesaid, which the said Charles Morgan now owns or is entitled to. The rights and things to be transferred to said R. R. Co. under this second article are to be conveyed and transferred at the time and in the manner following, that is to say, as soon as the proper instruments of transfer and conveyance can be prepared in New Orleans, for the preparation of which the said Charles Morgan is at once to give the proper directions, and when such instruments are prepared the said Charles Morgan is at once to execute and deliver the same to said R. R. Co., he procuring his wife to unite therein if the said company, under the advice of counsel, shall so request, and the said N. O., M. and T. R. R. Co. agrees with the said Charles Morgan, that it will construct and complete such railroad from Brashear City, northwestwardly, to connect with its own main line at or near Vermillionville, and will complete the same to such point of connection by the time at which it shall complete its main line of said R. road from Vermillionville to Houston.

Third. The said Charles Morgan agrees to subscribe to the extent of one million two hundred and fifty-eight thousand dollars,
175 upon the same terms as the other subscribers, the now pending subscription for the securities of the said The N. O., M. and T. R. R. Co., which has been subscribed by Oakes Ames, E. D. Morgan, and others, and which has been exhibited to said Charles Morgan, which subscription of said Charles Morgan shall be for $899,000 of first-mortgage eight-per-cent. bonds, and $359,000 of the second-mortgage bonds, the latter to be guaranteed by the State of Louisiana, which subscription of said Charles Morgan will entitle him by its terms, in consideration of his paying $1,258,000, to $1,258,000 of 8 % income-bonds, and $1,258,000 of stock in addition to the $899,000 of 1st-mortgage bonds and $359,000 of guarantee-bonds.

Fourth. The two sums of $797,800 and $250,000 and interest which are payable to said Charles Morgan by the provisions of the foregoing first and second articles are to be satisfied to him by means of his retaining the amount thereof out of the $1,258,000 which will be payable by him to said railroad co., under his subscription provided for in the third article.

Fifth. It is understood and agreed between the said N. O., M.
176 and T. R. R. Co., as owners of the above-mentioned 5,078 shares of stock of the Ponchartrain Railroad Company (the entire stock of that company being 7,500 shares) in so far as they as such owners can agree, on the one side, and the said Charles Morgan on the other side, that the said Charles Morgan shall and will purchase from the said Ponchartrain R. R. Co., and the Ponchartrain R. R. Co. shall and will sell to him, for the price and sum of $250,000, to be by him paid in cash to the Ponchartrain R. R. Company therefor, that part of the railroad for said company, being about one mile and a quarter in length, which lies between their old depot and their new depot in New Orleans, including such new depot, together with all the rights, privileges, and franchises belonging to that part of the Ponchartrain Railroad to be sold, held under grants from the State of Louisiana and the city of New Orleans respectively. And the said Charles Morgan agrees and binds himself to accept such purchase and pay such sums, $250,000, in cash for the above-specified portion of the Ponchartrain Railroad Company's railroad when and as soon as the conveyance and transfer to said
177 Charles Morgan shall be made. And the said The N. O., M. and T.

R. R. Co. hereby agree with the said Charles Morgan on his own behalf and on behalf of the holders of the remaining 2,422 shares of the capital stock of the Ponchartrain R. R. Co., that at any time before the 1st day of February, 1872, the N. O., M. and T. R. R. shall and will purchase from any of the holders thereof who may within such time elect to sell the same, such parts of the said remaining 2,422 shares *of* such respective holders may choose to sell at and for the price of the par value thereof, provided such holders so electing to sell shall at the same time subscribe in like manner and on like terms as said Charles Morgan has agreed to do by the third article of this agreement, and for an amount equal to the par value of such Ponchartrain R. R. Co. stock by them elected to be sold, the subscription for the sureties of the N. O., M. and T. R. R. Co. mentioned in the said third article, so as that the sum payable by such parties respectively upon the last-mentioned subscription shall provide the means of paying for such Ponchartrain R. R. stock so sold by them, and the same shall be applied accordingly. And it is understood and agreed that if there be found to be any tech-
178 nical legal difficulty in the making such absolute conveyance and transfer to said Charles Morgan of such portion of said Ponchartrain R. R. as above provided, said Charles Morgan will accept as the equivalent thereof instead of such absolute conveyance and transfer, a perpetual lease to him of such portion of said Ponchartrain Railroad free of rent, but subjecting himself to the obligation to pay the taxes thereon and keep the same in operation, and in this event the $250,000 shall be payable as a consideration for such perpetual lease as if it were a sale.

Sixth. It is declared to be the intention and purpose of the parties to this agreement, and one of the objects of the arrangements between them, which are hereinbefore set forth, to put an end to the opposition and rivalry in respect to the passengers and freight business between New Orleans and Mobile, which has heretofore existed between the railroad of the said N. O., M. and T. R. R., running between those two cities, and the steamboat-line which the said Charles Morgan has been hitherto running between the terminus of the Ponchartrain Railroad and
179 the city of Mobile, and it is declared to be the intent hereof to concede and assure to the said The N. O., M. and T. R. R. Co., so far as is or may be in the power of said Charles Morgan, the whole of said passenger and freight business between Mobile and New Orleans, or the terminus of the Ponchartrain Railroad, or any other railroad built or to be built, running out of New Orleans towards Mobile. And for the consideration aforesaid, and as a part of the said general arrangement, it is understood and agreed that the said Charles Morgan hereby agrees with the N. O., M. and T. R. R. Co. that during the term of fifteen years from that date he will not and shall not run or be directly or indirectly concerned or interested either personally or consciously as stockholder of any corporation other than the N. O., M. and T. R. R. Co., in the running of any steamboat between Mobile and New Orleans, or any point between Mobile and New Orleans between which point and New Orleans there shall be connections by railroads or otherwise, and in case of violation of their covenant the said Charles Morgan further agrees to pay to the said The N. O., M. and P. R. R. Co. the sum of one thousand dollars for
180 each and every day on which there shall be such violation, as the liquidated damages for such breach of covenant.

Seventh. Within fifteen days after the signing of this contract, the said Charles Morgan shall cease his opposition here by the steamers between the terminus of the Ponchartrain Railroad and Mobile, and thereafter until the time for the delivery of the things mentioned in the first article

he shall not run or be interested in the running of any steamboat between those points.

Eighth. The gross amount of all receipts for through frieght and mails for the whole distance between New Orleans and Houston upon the railroad which is contemplated to be run by the parties of the second part between New Orleans and Houston, and the gross amount of all receipts upon the railroad between New Orleans and Brashear City, owned by said Charles Morgan, derived from through freight, passengers, and mails carried by rail the whole distance between New Orleans and Houston, shall, for the term of seven years after the said railroad between New Orleans and Houston shall be put in operation, be stocked
181 together and divided between the parties hereto, prorated in proportion to the lengths of the completed railroads owned by the said parties respectively, estimating such length as follows, viz: for said Charles Morgan the length of his railroad between New Orleans and Brashear City, and for the N. O., M. and T. R. R. Co. the length of their entire line of road or roads between New Orleans and Houston, including the branch between Vermillionville and Brashear City, and it being expressly understood and agreed that the stipulations of this eighth article refer only to receipts of said roads derived from the through freights, passengers, and mails passing by rail the entire distance between the points above specified, viz, New Orleans and Houston, and that the same have no reference to receipts for way passengers, freights, or mails for less distance.

All suits and legal proceedings now pending between the parties to this agreement shall be immediately, upon the making of this agreement, *be* discontinued, each party paying his or its own costs and expenses therein.

In witness whereof the said contracting parties have hereunto
182 set their hands and seals (The N. O., M. & T. R. R. Co. by its vice-president duly authorized) on the day and year first above written.

CHAS. MORGAN. [L. S.]

The N. O., Mobile and Texas Railroad Co.,
By JOHN A. GRISWOLD, *V. P.*

[SEAL OF THE CO.]

In the presence of—
J. L. MACAULY.
J. RUITOUL.

Resolved, That Messrs. Griswold, Banker, and Jumis be, and are hereby, appointed a committee, with full authority to confer with Mr. Charles Morgan relative to the existing competition between New Orleans and Mobile and in regard to the exchange of the steamer Thomas Kelso for the stock of the Ponchartrain Railroad Com. held by Mr. Morgan, conditioned upon the withdrawal of the steamboats from the line between New Orleans and Mobile, and to make such arrangements with Mr. Morgan as they shall deem for the interests of this company.

Resolved, That Joseph Seligman be, and he is hereby, appointed a member of the committee, created by resolution adopted July 18th, 1871, in addition to the persons named in said resolution, with like authority with said persons to confer with Mr. Charles Morgan upon the questions stated in said resolution.

Resolved, That L. P. Morton and L. A. Von Hoffman be, and they

are, added to the committee appointed, resolution adopted July
183 18th, 1871, to negotiate with Mr. Charles Morgan, on the part of this company, and that they be vested with like full power and authority as was given to the original committee.

I, the undersigned, dy. recorder of mortgages for the parish of Orleans, do hereby certify that the within memorandum agreement was this day recorded in this office, in book No. 95, folio 215 & seq.

New Orleans, January 29th, 1873.

(Sig'd) C. DARCANTEL.

RECORDER'S OFFICE,
St. Mary's Parish, Louisiana.

I, James G. Parkerson, recorder, do hereby certify that the foregoing act of agreement has been duly recorded in book R of my office, on pages 279 to 284, inclusive, number 12472, on the 7th day of April, 1873.

In evidence whereof witness my official seal and signature, April 7th, 1873.

(Signed) J. G. PARKERSON,
[SEAL OF RECORDER.] *Recorder.*

RECORDER'S OFFICE,
Iberia Parish, of Louisiana.

I hereby certify that the foregoing act of agreement has been
184 duly recorded in book No. 1, miscellaneous, pages 356 to 362, inclusive. Entry No. 270, inscribed therein this eighth day of April, 1873.

In testimony whereof witness my official seal and signature at New Iberia, this eighth day of April, 1873.

(Signed) LOUIS DE BLANE,
[SEAL OF RECORDER.] *Deputy Recorder.*

STATE OF LOUISIANA,
Parish of Calcasieu, Recorder's Office.

I hereby certify that the annexed articles of agreement between Charles Morgan and the New Orleans, Mobile and Texas Railroad Company has been duly recorded in this office, in book A of conventional mortgages, from pages 176 to 186, both inclusive. Recorded on this 16th day of April, A. D. 1873.

Given under my hand and seal of office at Lake Charles, La., this 16th day of April, A. D. 1873.

(Signed) JOHN A. SPENCE,
[SEAL OF RECORDER.] *Parish Recorder.*

RECORDER'S OFFICE,
Parish of St. Martin.

I hereby certify that the foregoing act of agreement has been duly recorded in this office on the 9th day of April, 1873, in book No.
185 4, miscellaneous, pages 233 to 243, inclusive, No. 364.

In testimony whereof I have hereunto set my hand and seal of office on this 9th day of April, 1873.

[SEAL.] (Signed) L. P. FOURNET,
Dy. Recorder.

STATE OF LOUISIANA,
Parish of Lafayette, Recorder's Office.

I, the undersigned, recorder of the parish of Lafayette, do hereby cer-

tify that the foregoing memorandum agreement was this day inscribed and recorded in my office, in book I, folio 474 to 479, inclusive. Entry No. 6554.

Given under my hand and seal of office, at Vermillionville, this 10th day of April, A. D. 1873.

[SEAL.] (Signed) WM. BRANDT,
Recorder.

(Copy.)

OPELOUSAS, *April 12th*, 1873.

I, James N. Thompson, recorder in and for the parish of St. Landry, La., do hereby certify that the foregoing agreement was this day recorded in 15, from pages 12 to 19.

Witness my hand and seal of office on this day and date above mentioned.

[SEAL.] (Signed) JAMES N. THOMPSON,
Recorder of St. Landry.

186 STATE OF LOUISIANA, *Parish of Orleans:*

Third justice of the peace for the parish of Orleans, personally came and appeared Henry J. Leovy, residing in New Orleans, La., who, being duly sworn according to law, doth depose and say that the names of Charles Morgan and John A. Griswold attached to the foregoing memorandum of agreement made on the 12th day of December, 1871, is in the handwriting of Charles Morgan and John A. Griswold, and both said parties admitted to deponent that they had executed said agreement.

(Signed) HENRY J. LEOVY.

Sworn and subscribed to this 29th day of January, A. D. 1873.

(Signed) JOHN L. LARESCHE,
Third Justice of the Peace for the Parish of Orleans.

United States circuit court, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original filed as "Exhibit G" in the suit of Charles Morgan vs. The New Orleans, Mobile and Texas Railroad Company et al., May 30th, 1873, and numbered 7012 of the docket of this court.

New Orleans, October 16, 1874.

(Signed) F. B. VINOT,
Dy. Clerk.

187 *Additional testimony of G. W. R. Bayley.—Filed Nov. 3rd*, 1873.

Superior district court, parish of Orleans.

STATE OF LOUISIANA } No. 571.
vs.
CHARLES MORGAN. }

Railroad to Brashear completed early in 1857, at which time I was chief engineer of the company.

Construction thence west was continued from time to time until about

the close of 1862 or early in 1863, at which time the clearing and grading was nearly completed to Opelousas, 85 miles beyond Brashear.

At the breaking out of the war, arrang'ments had been made for constructing the road from the town of Opelousas to the Sabine River, 98 miles; but the capture of New Orleans prevented further progress.

After the restoration of the road to the company, in 1866, by the General Government, every possible effort was made to resume work and complete the road, but without success.

In 1869 the road was sold to Charles Morgan, and he endeavored to form a company for its completion to Texas. This not succeeding, he subsequently offered to complete it, with his own means exclu-
188 sively, in a communication to the legislature of Louisiana, and within a specified time, on condition that the State would not aid or subsidize any opposition company. This offer was not accepted, however, and the N. O., M. and T. R. R. Company was subsidized.

At the close of 1871, Mr. Morgan closed an agreement with the said N. O., M. and T. R. R. Company, whereby he became a subscriber for the securities and stock of said company to the amount of $1,258,000, and said company agreed to complete the road to Vermillionville, and thence to Texas.

In the spring of 1872 work was resumed between Brashear and Vermillionville under this agreement, and this continued until August, 1872.

Mr. Morgan, in July, 1872, changed the *guage* of his road and rolling-stock from New Orleans to Brashear, in anticipation of the extension of the road from Brashear to Texas, as per his agreement with the N. O., M. and T. R. R. Company.

The road was regraded in part betweeen Brashear and Vermillionville; about 50,000 cross-ties were delivered on same, some bridges were built, several "rights of way" were purchased, and arrangements were made to commence track-laying from Berwick's Bay.

189 About $355,000 were expended between Brashear, Vermillionville, and Calcasieu River, of which not far from $80,000 to $100,000 was between Vermillionville and Brashear.

During the past year Mr. Morgan has instituted suit, in consequence of the failure of the N. O., M. and T. R. R. Company to comply with their agreement to complete the road from Brashear to Texas, to recover the unfinished road and franchises west, and this suit is now pending in the U. S. circuit court.

New Orleans to Brashear, 80 miles; Brashear to Vermillionville, 63 miles; Vermillionville to Texas, via Lake Charles, 101 miles.

I am informed, and believe from what I have seen and know, that Mr. Morgan has expended over two millions of dollars on his road, branches, and on various improvements connected therewith.

(Signed) G. W. R. BAYLEY.

NEW ORLEANS, *Dec. 18th*, 1873.

Consent of counsel.

Superior district court, parish of Orleans.

STATE OF LOUISIANA } No. 571.
vs. } " 2947.
CHARLES MORGAN. }

In these cases, as some of the papers have been mislaid in the
190 clerk's office, it is agreed that defendant file now nunc pro tunc:

1st. Testimony of Alex. C. Hutchinson, marked "H."

2d. Testimony of C. A. Whitney, (with pamphlet, of George Pandely;) admission and testimony of G. W. R. Bailey, marked "B, 1 and 2."

3rd. The acts of the legislature specified in the note of evidence.

4th. Contract between Charles Morgan and the New Orleans, Mobile and Texas Railroad Company, made 12th Dec., 1871, marked "C."

5th. Act before Magner, N. P., April 1st, 1859, mortgaging N. O., Op. & G. W. R. R. to secure $2,000 bonds, marked "D."

6th. Record 5788, in U. S. circuit court of La.

(Signed) LEOVY & MONROE.
Attys. for Defdt.

(Signed) WM. REED MILLS,
For A. P. Field, Atty. General.

N. O., *Nov.*, 1874.

Note by clerk of court.

The testimony of Alex. C. Hutchinson, marked "A," of C. A. Whitney, of George Pandely, the admission and testimony of G. W. R. Bay-
191 ley, marked "B 1 and 2," as well as pamphlet, act before Magner, N. P., mortgaging R. R. to secure bonds, referred to in foregoing consent, are copied on pages 41, 65, & 151, 172, & 232, and 184, respectively, of this transcript. The acts of the legislature and record of U. S. court are copied on pages 237 and following pages of this transcript.

Act 149, *offered by defdt. and filed Nov. 3rd*, 1873.

No. 149.

AN ACT to incorporate the New Orleans, Opelousas and Great Western Railroad Company:

Whereas a corporation styled the New Orleans, Opelousas and Great Western Railroad Company has been created under the act of the legislature entitled "An act for the organization of corporations for works of public improvement and utility," approved March eleventh, eighteen hundred and fifty-two, which said corporation was enacted in the following words, to wit:

We, the undersigned, agree to form ourselves into a corporation under the laws of the State of Louisiana, as particularly set forth in "An act for the organization of corporations for works of public improvement
192 and utility," and which is hereto annexed, for the purpose of constructing a railroad from the town of Algiers, on the opposite bank of the Mississippi River, from New Orleans, and thence along the most eligible route to or near Thibodeaux; thence through Terre Bonne to Berwick's Bay, crossing said bay; thence to or near Washington, on the Courtableau, in the parish of St. Landry, the present proposed terminus, and hereafter to some point on the Sabine River, the boundary between Louisiana and Texas, that will be convenient and advantageous to the interests of both States, to be hereafter agreed upon, with a view to the extension of said road across the State of Texas to El Paso, on the Rio Grande, and ultimately to the Pacific; and for that pupose we have formed the annexed charter, and have signed the same and added to our signature a statement of the number of shares and the amount of our subscriptions to said company.

CHARTER OF THE COMPANY.

1. The said corporation shall be called "The New Orleans, Opelousas

and Great Western Railroad Company," and its domicil' is fixed in the city of New Orleans.

193 2. The said corporation is established for the purpose of constructing, working, and maintaining a railroad from Algiers, on the opposite bank of the Mississippi River, from New Orleans, and thence westward through or near Thibodeaux; thence to Berwick's Bay, crossing which; thence to Washington, or near it, on the Courtableau, in the parish of St. Landry, and from thence, hereafter, to be continued to the point on the Sabine River most favorable for the purpose of continuing said road through the State of Texas to El Paso, on the Rio Grande; the road to be made on such a scale as shall serve for the main trunk of a line of railroad as shall form a continuous communication between New Orleans, Texas, and the Pacific States or Territories and such branches as they may hereafter choose to make.

3. The capital stock of the company is fixed at three millions of dollars, divided into one hundred and twenty thousand shares, at twenty-five dollars each. A payment of five per cent. on the amount of each share shall be made at the time of subscribing. The subsequent payments shall be made in such sums and at such periods as shall be fixed by the board of directors: provided that no call shall be made for more than ten per cent. at one time, and that sixty days' notice of each

194 call shall be given by publication in one newspaper in New Orleans, which shall be known to the stockholders as the official paper of the company, and such newspapers as may be designated along the line of the road. Not more than three calls shall be made in this year, the subsequent years the calls to be fixed by the stockholders at their annual meeting in January, eighteen hundred and fifty-three.

4. The said corporation shall go into operation and be organized as soon as shares of stock to the amount of three hundred thousand dollars shall have been subscribed.

5. The business of the corporation shall be conducted at its domicil' in the city of New Orleans, by a board composed of eighteen directors, who shall be stockholders. The directors shall elect one of their body as president of the company, at their first meeting after their election. A quorum to do business shall consist of at least seven directors. At all elections by the stockholders, and all their meetings, each share shall be entitled to one vote. After the first year, all shares of stock must be owned and possessed by the voter in his own right, or his principal if held by proxy, six months before voted on. Votes may be given in person or by proxy. No person shall vote more than fifteen hundred shares by proxy. The president of the company is the officer

195 designated as the one on whom legal service of all process or citation against the company may be made, and the company agree to be bound by service of process or citation, whether made on the president in person or left to his address at the office of the company in the hands of any of its officers.

6. The first board of directors shall be chosen as soon as the lists of subscription shall be closed. This election shall be held at the time and place designated by the commissioners with receiving subscriptions, hereinafter designated. Notices of this election shall be given by publication, made fifteen days in advance, in two newspapers published in New Orleans. The first election shall be held under the superintendence of three commissioners, to be appointed from amongst the stockholders by the board of directors for the time being. The first board of directors shall hold office until the first Monday of July, eighteen hundred and fifty-three. The elections shall be annual, and each subsequent board

shall be elected on the third Monday of June. A failure to elect directors shall not dissolve the corporation, but the board in office shall continue the exercise of its functions until a new board can be
196 elected. All notices of election and of meetings of stockholders, after the first election above provided for, shall be given by publication, thirty days in advance, in the official paper of the company published in New Orleans.

7. The following persons are hereby appointed commissioners for the purpose of receiving subscriptions to the stock of said corporation, viz:

From the city and its environs.—Christopher Adams, James Robb, Ambrose Lanfear, M. O. H. Norton, Maunsel White, William A. Gasquet, B. H. Payne, J. W. Stanton, P. Simms, M. M. Cohen, R. F. Nichols, Leon Bernard, J. Y. De Egana, S. J. Peters, Robert Geddes, James Gasquet, H. R. W. Hill, Felix Labutut, R. B. Sumner, B. F. Flanders, John Hughes, Emile La Sere, A. Chiapella, J. B. Ollivier, A. B. Seger, J. Thayer, H. E. Lawrence, Fergus Gardere.

From St. Landry.—J. H. Overton, E. H. Martin, Lastie Dupre, Wm. M. Prescott, Robert E. Smith, C. L. Swasey, James Aikenhead.

From Lafayette.—Alex. Mouton, Robert Cade, E. J. Guequon, Robert Taylor, Andrew Martin, Wm. G. Mills.

From St. Martin.—Alex. De Clouet, V. A. Fournet, Harvey Hopkins, John Devalcourt, Valery Martin, Zephirin Broussard.

From St. Mary.—Joshua Baker, J. B. Murphy, John Ager, Ralph Caffrey, Optatus F. Darby, F. B. Richardson, J. Y. Sanders,
197 Robert M. Brashear, G. L. Fusilier.

From Vermillionville.—R. H. Patton, Robert Perry, Ambrose Lacour, Valsaint Veasy, Levy Rice.

From Terre Bonne.—Van P. Winder, J. J. Hanna, J. C. Potts, Judge Cage, J. L. Caruthers, G. F. Connelly.

From La Fourche Interior.—G. S. Guion, Leonidas Polk, Judge Thibodeau, J. C. Batey, J. W. Tucker, A. Keys.

From St. Charles.—William H. Polk, Richard Taylor, J. Massicot.

From Assumption.—E. E. Kittridge, W. W. Pugh, Robert E. Martin, J. C. Delavigne, V. Leblanc, Daniel Morrison.

The said commissioners shall have power to appoint deputies or agents in other places for receiving subscriptions. Seven shall form a quorum to do business in the city. The lists of subscriptions shall be closed on the first day of May, eighteen hundred and fifty-two; or, if the subscriptions shall not amount to three hundred thousand dollars at that date, then they shall be closed as soon as said amount shall be subscribed. As soon as the subscription shall be closed, they shall all be returned to New Orleans for registry in the office of recorder of mortgages of said city, as required by law.

8. Immediately after the election of the first board of directors,
198 the subscription-lists shall be opened for a term of four months, in this State and elsewhere, as the said board of directors may deem advisable, and public notice shall be given thereof in a newspaper published at the place where said subscription-books are opened; and the board shall have power to appoint agents for receiving the subscriptions. At the end of the said four months, if the amount of subscriptions shall exceed the capital required, a meeting of stockholders and subscribers shall be held to determine whether the capital shall be increased to the whole amount of the subscription; and if the capital be not so increased, then the number of shares subscribed shall be reduced by deductions from the largest subscriptions, so as not to diminish the number of shares of any subscriber whilst another remains with a large number of

shares. If there be any deficiency in the amount of capital subscribed, the said subscription-books may be re-opened and closed from time to time till the whole capital shall have been subscribed.

9. In case of failure on the part of any subscriber to pay the installments on his stock, and selling it for the benefit of the said stockholder, or of compelling, by suit, the payment of such installments; and no stockholder shall be permitted to vote whilst in default.

10. All meetings of stockholders called for the purpose of in-
199 creasing or diminishing the capital stock of the company, or for any of the purposes enumerated in the fifth section of the act of the legislature of Louisiana entitled "An act for the organization of corporations for works of public improvement and utility," shall be composed of persons holding, in their own right or as agents for others, at least three-fourths of the stock of the company, in order to make valid and binding their acts in the premises; at all other meetings of stockholders and at all elections, a majority of stock shall be represented; and in this latter case, if such majority be not present nor represented, the meeting shall be adjourned for one week, and the vote of the majority of the stock present and represented at such adjourned meeting shall bind the company in the same manner as if a majority of all the stock were present and represented.

11. Any vacancy in the board of directors occurring during the year may be filled by a vote of the board of directors.

12. The president and directors of said corporation shall have power to make and use a common seal; to elect a newspaper, which shall be known to the stockholders as the official paper of the company, and in which all its advertisements shall appear; and to do everything
200 necessary for the construction, repair. and maintenance of the railroad hereinbefore described, with as many tracts as they may deem necessary; to make and contract for all works whatsoever for the proper and complete working of said road; to construct all bridges over navigable and other streams or canals, and whether said crossing shall be by bridge or stream-ferry, to prescribe the width and height of said bridges, and the size of proper draws, when over navigable streams, for the passage of vessels; to contract specially for work, labor, or materials to be furnished to the company, and to agree whether the whole or any part thereof shall be payable in the capital stock of the company; to appoint a secretary, treasurer, superintendent, engineers, solicitors, and other officers or servants necessary or proper for the faithful performance of any duty necessary to the construction and proper maintenance of the said railroad; to make all contracts for the furnishing of iron or other necessary equipments or supplies of the road, and on such credits as they may deem proper; to borrow money for and on account of said road, in any sum not to exceed fifty thousand dollars, unless authorized by a vote of two-thirds of the stockholders to exceed that sum, and to mortgage the said road and its appurtenances to secure the payment of the same; to make all contracts necessary for the purpose of speedily and prop-
201 erly constructing said road; to purchase with the funds of the company all the locomotives, engines, cars, vehicles, teams, and other equipments deemed by them necessary or useful for the purposes of the company; and when said road, or any part thereof, is finished, to fix the rate of toll for passengers and merchandise; to fix a telegraph-line along said road, and regulate the fees of messages sent; to make all rules, and regulations, and other by-laws deemed necessary for the proper, safe, and regular transaction of the business of the company; but such rules and regulations shall be subject to repeal, change, amendment, or modifi-

cation by the stockholders at their meetings, or by the president and directors in the intervals; they may accept donations in land or money, or such materials or labor as may be useful to the company; they shall declare semi-annually the dividends arising from the working of the road after the payment of all necessary expenses, said dividends shall be declared and payable to the stockholders within the first fifteen days of the months of January and July of each year; they shall make a report in full detail to the stockholders, up to the first days of January and July of each year, of the working of the road and its expenses and profits, as also a detailed statement of all contracts during the process of
202 constructing the road and its bridges, with an account of the progress made; they shall keep, or cause to be kept, a regular set of books, in which shall be entered in the regular order of their several dates, all business or other transactions of the company, which said books shall be open to the inspection of any stockholder, at the office of the company, during the business hours of the day; a stock-book shall be kept and certificates of stock shall be issued to the stockholders, and no transfer of stock shall be binding on the company until made on its stock-book; and to call a meeting of the stockholders on the written requisition of stockholders representing one-fifth of the stock of the company.

13. If any subscriber for stock shall be taxed, by virtue of any law or ordinance, for the payment of subscriptions to the company, he shall have the right of reducing the number of his shares by an amount equal to that of the tax so imposed; but his right must be exercised within thirty days from the date of the law or ordinance, after which term it shall not be allowed.

14. An annual meeting of the stockholders shall be held on the third Monday of each January, to receive the annual report of the past year's operations and business of the company; at which meeting
203 a full statement of the financial affairs and other business of the company shall be submitted by the president and directors for examination by the stockholders and their agents.

15. The board of directors shall have power of making such arrangements as they may deem proper for the connection of any branch roads with said New Orleans, Opelousas and Great Western Railroad, developing the northwestern parishes of Louisiana, and connecting with the State of Arkansas on the boundary-line of that State and Louisiana, as they may deem advantageous to the business and revenues of the railroad of this company.

16. At the expiration of the charter, or whenever the dissolution of the corporation shall render necessary its liquidation, three commissioners shall be elected by the stockholders, whose duty it shall be to take possession of the property of the company and conduct its business to a final liquidation, on such terms and in such manner as shall be determined by a meeting of the stockholders regularly convened for that purpose; and if, at the expiration of the present charter, a majority of the stockholders in number and amount shall desire to renew the same for a further term, the stockholders dissenting from the renewal shall be bound
204 to transfer their stock to those desiring the renewal, at its fair value, to be fixed by appraisers mutually chosen for that purpose. Therefore,

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, that the stockholders of said New Orleans, Opelousas and Great Western Railroad Company are hereby specially created into a body corporate and politic

under the conditions and limitations, and with all the rights, powers, duties, and liabilities recited in the preamble to this act, and said New Orleans, Opelousas and Great Western Railroad Company, so specially created, shall have full power to sue and be sued, plea and be impleaded, to do and perform all other acts, and enjoy all the rights and privileges, incident to corporations.

(Marginal note:) New Orleans, Opelousas and Great Western Railroad Company incorporated. (To section 1.)

(Marginal note to sec. 2.)

EXEMPTION OF CERTAIN OBJECTS FROM TAXATION—EXEMPTION OF CERTAIN PERSONS FROM MILITARY AND JURY DUTY.

SEC. 2. Be it further enacted, &c., That the capital stock of
205 said company shall be exempt from taxation, and its workshops, warehouses, and vehicles of transporation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of this State.

SEC. 3. Be it further enacted, &c., That the president, engineer, clerks, agents, and servants of said company shall be exempt from jury duty and from military duty, except in case of invasion or insurrection.

RIGHT OF WAY THROUGH STATE LANDS, &C.

SECTION 4. Be it further enacted, &c., That said company shall have the right of way through all lands owned by the State of Louisiana for the breadth of one hundred and fifty feet on each side, and be authorized to cut and use the timber and such other materials thereon as they see fit within one mile on either side, for the purposes of said road, provided, that this privilege of cutting timber shall continue so long as the land shall remain the property of the State.

CAPITAL STOCK—HOW THE SAME SHALL BE DIVIDED—PROVISO.

SECTION 5. Be it further enacted, &c., That the capital stock of said company be, and the same is hereby, fixed at six millions of dollars; and the same shall be divided into two hundred and forty thousand shares, of twenty-five dollars each; provided, the president and
206 directors shall have power to convert said shares into shares of one hundred dollars each.

CERTAIN POWERS AS TO THE PURCHASE OF THE PROPERTY &C., OF OTHER RAILROAD COMPANIES, CONFERRED ON THIS COMPANY.

SECTION 6. Be it further enacted &c., That the president and directors of said company shall have power to buy or accept the conveyance of the charter, property, or appurtenances of any railroad company within or without the limits of this State, whenever the route of said railroad company shall form a continuous line with that of the "New Orleans, Opelousas and Great Western Railroad Company;" and the said company shall also have power to contract to perform the transportation on any lateral railroad owned by other parties; provided, said lateral railroad shall be so united with the New Orleans, Opelousas and Great Western Railroad as to form a branch therefrom.

CERTAIN WORDS STRICKEN OUT, AND OTHERS SUBSTITUTED.

SECTION 7. Be it further enacted, &c., That the words "to or near Thibodeaux," in the preamble to this act, be, and the same is hereby, stricken out, and the words "to Bayou La Fourche" substituted.

TERM OF OFFICE OF DIRECTORS—TIME OF ELECTION OF BOARD OF DIRECTORS.

SECTION 8. Be it further enacted &c., that the term of office of the directors to be elected on third Monday of June, one thousand
207 eight hundred and fifty-three, as provided in the preamble of this act, shall endure only until the first Monday of February, one thousand eight hundred and fifty-four. Each succeeding board of directors thereafter shall be annually elected on the Wednesday following the third Monday of January of each year, and shall continue in office until the first Monday of February of each year, subject, however, to the provisions of said preamble to this act in cases of failure to elect directors.

POWERS OF BORROWING MONEY CONFERRED ON THE COMPANY—PROVISO—HOW LOANS MAY BE SECURED—RE-INSCRIPTION OF MORTGAGE NOT NECESSARY TO CONTINUE THE SAME IN FORCE.

SEC. 9. Be it further enacted, &c., That the president and directors of the said New Orleans, Opelousas and Great Western Railroad Company may borrow, from time to time, such sums of money as may be required for the construction of said road over and above the amount received from subscriptions to its capital stock; provided, that the amounts borrowed do not exceed six millions of dollars; and said president and directors be, and are hereby, authorized to secure said loans by mortgaging the property of the company, in whole or in part, as they shall deem expedient; and any mortgage so given need not be re-inscribed to continue said mortgage in force.

BONDS ISSUED BY THE COMPANY MAY, UNDER CERTAIN RESTRICTIONS, BE CONVERTED INTO THE STOCK OF THE COMPANY.

208 And the president and directors of said company may confer on the holder of any bond or bonds issued for money for the use of said company the right to convert the principal thereon into the stock of said company, at any time not exceeding five years from the date of said bond, under such obligations as the president and directors may see fit to adopt: Provided, That the capital stock of said company shall not exceed six millions of dollars.

MODE OF BORROWING MONEY ON THE PLEDGE OF THE TAX DUE BY THE CITY OF NEW ORLEANS AND THE PARISHES OF THE STATE.

SECTION 10. Be it further enacted, &c., That whenever the president and directors of said company may see fit to borrow money on the faith of the tax due by the city of New Orleans and the parishes of the State for their subscriptions to said company under their several ordinances providing for said subscriptions, it shall be lawful for the said president or acting president of said company, under a resolution of the directors authorizing the issue of bonds on a pledge of the tax-subscription due from the city of New Orleans and the parishes of this State, to go before

any notary in said city and make an act of registry of said reso-
209 lution, which will then have the effect and force of a pledge in favor of the holders of the said bonds or notes, to secure the payment thereof when the same shall have been paraphed by the notary in the following manner:

First. The notary shall inscribe in the act of registry the date of each paraph in regular order, and state also the amount of the bond or note paraphed; and he shall paraph no bond or note not described in the resolutions of the board of directors and intended thereby to be issued and secured by the pledge.

Second. No notice shall be required to render this pledge valid, except the service of a copy of the resolutions of the board of directors of the company upon the mayor of the city of New Orleans, and upon the presidents of the police juries of the several parishes, tax-subscribers to the stock of said company: Provided further, That the provisions of this act shall apply to any pledge of the same tax already authorized and made under a resolution of the board of the directors of said company.

THIS COMPANY TO HAVE PERPETUAL EXISTENCE, UNLESS DISSOLVED BY A VOTE OF THREE-FOURTHS OF THE STOCKHOLDERS, OR UNLESS SAID CORPORATION SHOULD FAIL OR BE INSOLVENT.—POWERS OF LIQUIDATING COMMISSIONERS IN CASE OF FAILURE OR INSOLVENCY.

210 SECTION 11. Be it further enacted, &c., That said New Orleans, Opelousas and Great Western Railroad Company shall have perpetual existence, unless said corporation is dissolved by a vote of three-fourths of its stockholders, at a meeting called specially for the purpose, or unless said corporation shall fail or be insolvent; and in case of failure or insolvency, the president and directors of said company shall be created commissioners to liquidate the affairs of said company, but with powers limited to the collection and payment of the debts of said company, the preservation of its property, and the distribution of its effects to those who may be entitled thereto.

MODE OF AMENDING THIS ACT OF INCORPORATION.

SEC. 12. Be it further enacted, &c., That whenever the New Orleans, Opelousas and Great Western Railroad Company desire any change in this act of incorporation, or any additional rights, powers, immunities, or privileges, public notice shall be given of the same by advertisements in the official newspaper of said company published in the city of New Orleans, at least six months in advance of the passage of any
211 law by which said change may be effected, or said rights, powers, immunities, or privileges granted; and no alteration of and addition to the charter of said company shall be made in a manner different from that provided in this section.

WHEN THE AMENDMENTS MADE BY THIS ACT TO THE ORIGINAL CHARTER SHALL BE INCORPORATED INTO SAID ORIGINAL CHARTER AS A PART THEREOF.

SEC. 13. Be it further enacted, &c., That whenever any number of stockholders holding three-fourths of the amount of stock now subscribed to said company shall accept the amendments contained in *in* the

preceding sections of this act, said sections shall be incorporated into the charter of said company and take the place of any of the provisions of the original charter that may be inconsistent therewith.

WHEN THIS ACT TAKES EFFECT.

SEC. 14. Be it further enacted, &c., That this act shall take effect from and after its passage.

E. WARREN MOISE,
Speaker of the House of Representatives.
W. W. FARMER,
Lieutenant-Governor and President of the Senate.
P. O. HEBERT,
Governor of the State of Louisiana.

A true copy:

ANDREW S. HERRON.
Secretary of State.

212 *Act No. 145 of 1854.—Offered by defdt. & filed June 3, 1874.*

No. 145.

AN ACT to authorize railroad companies to mortgage said roads.

RAILROAD COMPANIES AUTHORIZED TO MORTGAGE THEIR ROAD FOR CERTAIN PURPOSES AND IN CERTAIN CASES.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That any railroad company established under the laws of this State may, to secure the payment of any obligation contracted by said company for the construction of said road, mortgage their said road, in whole or in part, and said mortgage, if made of the entire road, shall bear upon the entire road though the same be not completed at the time the mortgage was made; and such mortgage may also be made to bind the appurtenances of said road, its warehouses, depots, water-stations, locomotives, &c.

EFFECT OF SAID MORTGAGE.—WHEN RECORDED.

SEC. 2. Be it further enacted, &c., That a mortgage made by any of said companies shall bind the road, its warehouses, depots, water-stations, locomotives, and other appurtenances, that may be mortgaged in the several parishes where the same may be, by the record of said
213 mortgage in the parish where the principal office or domicil of said road may be, and such mortgage need not be re-inscribed to continue said mortgage in force.

JNO. M. SANDIGE,
Speaker of the House of Representatives.
W. W. FARMER,
Lieutenant-Governor and President of the Senate.

Approved March 16th, 1854.

P. O. HEBERT,
Governor of the State Louisiana.

A true copy:

ANDREW S. HERON,
Secretary of State.

Act 194 *of* 1856.—*Offered by defdt. June 3rd*, 1873.

Act No. 194.

AN ACT to extend the powers of railroad companies.

POWER TO BORROW MONEY BY ISSUE OF BONDS SECURED BY MORTGAGE.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That in addition to the powers conferred by law upon railroad companies, any railroad company established under the laws of this State may borrow, from time to time, such sum of money as may be required for the
214 construction or repairs of any railroad, and for this purpose may issue bonds on their obligations, secured by mortgages upon the franchises and all the property of said companies, and payable at such times and places as the president and directors may designate, with power to sell, pledge, or otherwise dispose of said bonds, on such terms as the said president and directors may deem expedient.

MORTGAGES WHEN RECORDED TO BE BINDING.

SEC. 2. Be it further enacted, &c., That a mortgage made by any company, as aforesaid, shall be binding in the several parishes through which a railroad may pass by the record of the mortgage in the parish where the principal office or domicil of the company may be located; and such mortgage need not be re-inscribed to continue it in force.

RIGHT MAY BE GRANTED TO CONVERT BONDS INTO CAPITAL STOCK.

The president and directors of any company may confer on the holder of any bond or bonds issued for money for the use of said company the right to convert the principal due thereon into the stock of said company at any time not exceeding ten years from the date of said bond or bonds, under such regulations as the president and directors may adopt; provided, that nothing in this act shall be so construed as to authorize an increase in the capital stock of any railroad company.

215 CERTIFIED COPIES OF CERTAIN PAPERS MAY BE RECEIVED IN EVIDENCE.

SEC. 3. Be it further enacted, &c., That copies of all the books and records kept by the several railroad companies in this State, including extracts from the stock-book, and minutes of the proceedings of the directors, certified by the secretaries of said companies under the seal of the company, shall be received in all the courts of this State as evidence in place of the originals.

WHEN THIS ACT TAKES EFFECT.

SEC. 4. Be it further enacted, &c., That this act shall take effect from and after its passage.

(Signed) WM. W. PUGH,
Speaker of the House of Representatives.
C. H. MOUTON,
Lieutenant-Governor and President of the Senate.
ROBERT C. WICKLIFFE,
Governor of the State of Louisiana.

A true copy.

ANDREW S. HERRON,
Secretary of State.

RECORD OF U. S. CIRCUIT COURT IN CASE OF CHARLES MORGAN vs. THE N. O., OPELOUSAS & GREAT WESTERN RAILROAD CO., No. 5788.

216 *Note by clerk.*

By agreement in open court, copied on page 63 hereof, the following documents only shall be copied of above suit, to wit:

1. Petition, with order of court thereon of March 30th, 1869.
2. Writ of seizure and sale, with return of U. S. marshal*l* thereon.

Petition for executory process, &c.—Filed Febry. 23, 1869.

To the honorable the circuit court of the United States for the district of Louisiana:

The petition of Charles Morgan, a citizen of the State of New York, residing in the city of New York, in the said State, respectfully represents—

That the New Orleans, Opelousas and Great Western Railroad Company, which has its domicil fixed in the city of New Orleans, in the State of Louisiana, and is a corporation created and existing therein under the laws of the State of Louisiana, and is in law a citizen of the State of Louisiana, was formed and organized under the act of the legislature of Louisiana entitled "An act for the organization of corpora-
217 tions for works of public utility," approved March 11, 1852, for the purpose of constructing a railroad from the town of Algiers, on the opposite bank of the Mississippi River from New Orleans, and thence to Berwick's Bay, crossing said bay, and thence to or near Washington, on the Courtableau, in the parish of St. Landry, and afterward to some point on the Sabine River, with a view to the extension of the said road across the State of Texas to El Paso, on the Rio Grande, and ultimately to the Pacific Ocean; and was, afterward, by the act of the legislature of the State of Louisiana entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 22nd, 1853, specially created a body corporate and politic, with full power to sue and be sued, plea and be impleaded, and to do and perform all other acts, and enjoy all the rights and privileges incident to corporations, as will be more fully seen by reference to said act of incorporation at page 115 of the acts of 1853.

And your petitioner further represents that by an act of the legislature of the State Louisiana, entitled "An act to extend the power of railroad companies," approved March 20th, 1856, in addition to
218 the powers before conferred by law upon railroad companies, it was specially provided that any railroad company established under the laws of the State of Louisiana might borrow, from time to time, such sums of money as might be required for the construction or repair of any railroad, and for that purpose might issue bonds or their obligations, secured by mortgage upon the franchises and all the property of said company, and payable at such times and places as the president and directors might designate, with power to sell, pledge, or otherwise dispose of said bonds, on such terms as the said president and directors might deem expedient; and that it was further specially provided in the said act that a mortgage made by any company, as aforesaid, should be binding in the several parishes through which a railroad might pass, by the recording of the mortgage in the parish where the

principal office or domicil of the company was located, as will more fully appear by reference to the said act at page 205 of the acts of the legislature of Louisiana of 1856.

And your petitioner further represents that the said New Orleans, Opelousas and Great Western Railroad Company, on the 17th day of March, 1859, resolved that, for the purpose of obtaining means
218 for the further construction of the road, the president should be authorised and instructed to issue two thousand bonds of the New Orleans, Opolousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons attached to the said bonds, of eighteen pounds five shillings sterling, or forty dollars each, the principal of the said bonds made payable at their office in New Orleans, and the interest thereof being made payable in New Orleans, New York, or London, as the president by his endorsement might determine; and that the president should be authorized and instructed to secure the payment of the said bonds and the interest thereon, by a first mortgage on the first grand division of the railroad of the company from Algiers (opposite the city of New Orleans) to Berwick's Bay, together with the land over which the said road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to that portion of the road, as will be seen by reference to a duly certified copy of the resolution passed by the board of directors of the said New Orleans, Opelousas and Great Western Railroad Company, on the said 17th day
219 of March, 1859, which is herewith filed, marked "Exhibit A."

And your petitioner further represents that, acting under the authority and instructions granted and given by the said resolutions, William G. Hews, president of the New Orleans, Opelousas and Great Western Railroad Company, on the 1st day of April, 1859, by public act passed before Selim Magner, a notary public for the city and parish of New Orleans, and in presence of two witnesses, declared that in pursuance of the resolutions of the board of directors of the said company passed on the 17th day of March, 1859, as aforesaid, and in virtue of the authority conferred on the said company by the said acts of the legislature of the State of Louisiana, approved on the 22nd day of April, 1853, and on the 20th day of March, 1856, he had on that day issued two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, signed by him and by Benjamin F. Flanders, treasurer of the company, redeemable on the 1st day of April, 1889, for the sum of one thousand dollars ($1,000) each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, in coupons, of forty dollars, or eight pounds five shillings sterling, each, the principal of the said bonds being made payable at the office of the company,
220 and the interest thereof payable in New Orleans, New York, or London, as the said president by his endorsement might provide; and all of which said bonds the said notary declared had been severally marked "ne varietur," and countersigned by him, for the purpose of more effectually identifying the same with the said act.

And your petitioner further represents that, in the said public act, the said William G. Hews, president of the said New Orleans, Opelousas and Great Western Railroad Company, declared that for and in consideration of the premises and in order to secure the full, faithful, and punctual payment, and the redemption of each of all of the said bonds on that day issued as aforesaid, to any future holder or holders thereof, and to each and every one of them, when the same should become due

and payable, and the payment of the interest accruing thereon, in the manner, and at the periods of time in the said public act stipulated, as evidenced by the coupons attached to the said bonds, respectively, payable on the first days of April and October of each year, the said New Orleans, Opelousas and Great Western Railroad Company granted in favor of Edward J. Forstall, or bearer, as well as in favor of all and every person or persons whomsoever who might become the holder or
221 holders or said bonds or coupons, or any of them, a first-mortgage lien or privilege upon the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, then in full operation, constru'ed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging to and appertaining to the said division of the said road therein mortgaged and referred to, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way and effects generally of every description and nature whatsoever, in use upon the said division of the said railroad, or in any way attached to or appertaining to the same, without any exception or reservation, as well as all such as should or might thereafter at any time be placed upon or attached to said division of the said railroad, whether for the purpose of replacing others removed, or from any other cause whatsoever; and promising not to alienate, or encumber, or in anywise affect the same, or any
222 part or portion thereof, to the prejudice of the said mortgage, as will more fully appear by reference to an authentic copy of the said act herewith filed, marked "Exhibit B."

And your petitioner further represents that the said public act of mortgage was duly recorded on the 8th day of April, 1859, in the office of the recorder of mortgages in and for the city and parish of New Orleans, as will be seen by reference to the certificate of the said recorder of mortgages herewith filed, marked "Exhibit C."

And your petitioner further represents that he is the legal holder of eight hundred and forty (840) of the said bonds issued by said New Orleans, Opelousas and Great Western Railroad Company as aforesaid, and marked "ne varietur," and countersigned by the said notary, to identify them with the said public act of mortgage aforesaid, given on the property of the said company, as described and set forth in the said public act, and that he is also the legal holder of three thousand six hundred and twenty-five (3,625) coupons of interest, of forty (40) dollars each, now past due and unpaid, attached to the said bonds, and of four thousand two hundred and ninety-six (4,296) coupons of interest detached, of forty dollars each, which belonged to and bears the
223 numbers of other bonds issued by the said New Orleans and Great Western Railroad Company, and marked "ne varietur," and countersigned by the said notary to identify them with the said public act of mortgage, given to secure the payment of the said bonds and coupons of interest as aforesaid, which said bonds and said coupons of interest, held by petitioner, are hereto annexed for reference, and are made part of this petition, and are set forth, enumerated, and described in the book herewith filed and marked "Exhibit D."

And your petitioner further represents that the said New Orleans, Opelousas and Great Western Railroad Company has altogether neglected and failed to pay the said seven thousand nine hundred and twenty-one coupons of interest as they respectively fell due; that the same are still

due and unpaid, and that the said company is now indebted to your petitioner on the same in the sum of three hundred and sixteen thousand eight hundred and forty ($316,840) dollars.

And your petitioner further represents that in the sixteenth annual report of the president and directors of the New Orleans, Opelousas and Great Western Railroad Company to the stockholders of the said
224 company, dated on the 25th day of January, 1869, it is declared that there are 15,465 past-due interest-coupons, of forty (40) dollars each, on the first-mortgage bonds of the said company, amounting to six hundred and six thousand ($606,000) dollars, which are now outstanding and unpaid, as will be seen by reference to a copy of an extract of the said report, thereby certified under the seal of the said company, which is herewith filed, marked "Exhibit E."

And your petitioner further represents that the said act of mortgage passed before Selim Magner, a notary public as aforesaid, and in the presence of two witnesses, as aforesaid, imports a confession of judgment, and that petitioner has a right in the premises to proceed by executory process against the said New Orleans, Opelousas and Great Western Railroad Company and have the said property subject to the said mortgage, consented, stipulated, granted, and contained in the said public act of mortgage, levied and sold according to law for the whole debt, the payment of which is secured by the said mortgage, and to have the price of the said property subject to the said mortgage, when sold, payable as follows, to wit: The said sum of six hundred and six thousand six hundred dollars, ($606,600,) the amount of the said
225 coupons of interest past due, which are now outstanding and unpaid as aforesaid, in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight (8) per cent. per annum thereon, payable semi-annually on the first day of April and the 1st day of October of each year, the terms of credit granted by the original contract to the said New Orleans, Opelousas and Great Western Railroad Company in the said bonds and the said public act of mortgage.

And your petitioner further represents that he is informed and believes that the said coupons of interest, in law, bear interest from and after they respectively arrive at maturity and become payable, and that he now expressly reserves his right to claim interest on the same respectively in another suit.

Wherefore your petitioner prays that executory process may be granted him in the premises; that three days' notice may be given to the said New Orleans, Opelousas and Great Western Railroad Company to pay to your petitioner the said sum of three hundred and sixteen thousand eight hundred and forty dollars due and unpaid as aforesaid, on the 7,921 coupons of interest held by your petitioner; and that in default of the said payment the said mortgaged property hereinbefore de-
226 scribed may be levied and sold according to law, for the whole debt, the payment of which is secured by the said act of mortgage, the price of the said sale to be payable as follows, to wit, the sum of six hundred and six thousand six hundred dollars, the amount due on interest-coupons past due on the first-mortgage bonds of the said company outstanding and unpaid as aforesaid, and the costs of this proceeding payable in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the 1st day of April and the 1st day of October of each year, the terms of credit granted by the original contract to the said New Orleans, Opelousas and Great Western Railroad

Company in the said public act of mortgage, and the said bonds identified therewith.

And your petitioner further prays for all and general relief.

(Signed) MILES TAYLOR,
Attorney for Petitioner.

Order for executory process.—Filed March 30th, 1869.

It is ordered that executory process issue in this case as prayed
227 for in the within petition; and that the said New Orleans, Opelousas and Great Western Railroad Company be notified for three days to pay to petitioner the said sum of three hundred and sixteen thousand eight hundred and forty dollars, ($316,840,) & the costs of this proceeding, and that in default of said payment the said mortgaged property described in the petition may be seized and sold according to law for the whole of the debt, the payment of which is secured by the said mortgage described and set forth in said petition, the price of the said sale payable as follows, to wit, the sum of six hundred and six thousand six hundred dollars, ($606,600,) & the costs of this proceeding in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the 1st day of April and the 1st day of October of each year.

March 30, 1869.

(Signed) E. H. DURELL,
Judge.

Writ of seizure and sale.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

228 CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

The President of the United States to the marshall of the United States for the district of Louisiana, greeting:

You are hereby commanded to make legal demand from the New Orleans, Opelousas, and Great Western Railroad Company of the payment of the sum of three hundred and sixteen thousand eight hundred and forty ($316,840) and the costs of this proceeding cash, and that in default of said payment, to seize and sell according to law (for the whole of the debt the payment of which is secured by the mortgage described in plaintiff's petition) the property belonging to said company and described as follows: The whole of the completed grand division between Algiers (opposite the city of New Orleans) and Berwick's Bay, in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main tracks and branches, and also all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said road, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils,
229 implements, rights of way, and effects generally, of every nature and description whatsoever, in use upon the said division of the

said railroad, or in any way attached to or appertaining to the same, without any exception or reservation. The price of the said sale payable as follows, to wit: The sum of six hundred and six thousand six hundred dollars ($606,600) and the costs of this proceeding in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per annum payable semi-annually, on the 1st day of April & the 1st day of October of each year. And what you do in the premises you make due return thereof, together with this writ, to our said court according to law.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at New Orleans, this 30th day of March, 1869.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *Dy. Clerk*.

Marshall's return on writ of seizure & sale.—Returned and filed Nov. 20, '69.

To the New Orleans, Opelousas and Great Western Railroad Co.:

230 By virtue of a writ of seizure and sale issued and to me directed by the hon. circuit court of the United States for the fifth circuit and district of Louisiana, in the above-entitled suit, I hereby notify you to pay into my hands, within three days from the service of this notice, three hundred and sixteen thousand eight hundred and forty dollars due to plaintiff, and the costs, and that in default of such payment, I shall seize and sell the property described in the accompanying petition and order, served herewith, to satisfy the mortgage debt, agreeably to said order and according to law.

(Signed) JOHN FAHY,
Dy. Marshall.

N. O. MARSHAL'S OFFICE,
New Orleans, March 31st, 1869.

(Return on above notice:)

Notice of demand served March 31st, 1869, and on the same served a copy of the within notice & copy of the petition & order in the said case, accompanying the same, on the N. O., Opelousas and Great Western Railroad Co., by delivering them to A. B. Seger, president of said company, at their domicile, No. 69 Canal st., in the city of New Orleans.

(Signed) JOHN FAHY,
Dy. Marshall.

U. S. MARSHAL'S OFFICE, 31*st March*, 1869.

231 U. S. circuit court.

(No. 2.) United States marshal's office, district of Louisiana.

CHARLES MORGAN
vs.
THE N. O., OPELOUSAS & GREAT WESTERN Railroad Co. } No. 5788.

To the N. O., Opelousas and Great Western Railroad Company:

Take notice that I have seized and after the legal delay shall proceed to advertise and sell, according to law, the whole of the completed grand division of the railroad between Algiers (opposite the city of New

Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road, and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, right of way, and effects generally, of every nature and description whatsoever, in use upon the said division of the said railroad, or in anywise attached or appertaining to the same,
232 without any exception or reservation, to pay and satisfy the writ issued in this case (with interest and costs) unless the same is immediately paid.

(Signed) JOHN FAHY,
Deputy Marshal.

Advertisement.

Circuit court of the United States for the fifth circuit and district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

By virtue of a writ of seizure and sale to me directed by the honorable the circuit court of the United States for the fifth circuit and district of Louisiana, in the above-entitled suit, I will proceed to sell at public auction, at the entrance to the custom-house, on Old Levee street, between Canal and Custom-house streets, in the second district of this city, on Tuesday, May 25th, 1869, at 12 o'clock m., the following-described property, viz: The whole of the completed grand division of the railroad between Algiers, opposite the city of New Orleans, and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands specially
233 appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road, and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, right of ways, and effects generally of every nature and description whatever in use upon the said division of the said railroad or anywise attached to or appertaining to the same, without any exception, or reservation, as per inventory on file in this office, seized in the above suit.

Terms of sale.—The sum of six hundred and eighty-six thousand six hundred dollars and costs, payable in cash at the time of adjudication, in U. S. Treasury notes, and the remainder of the purchase price payable on the first day of April, 1869, with interest thereon at the rate of eight per cent. per annum, payable on the first day of April and the first day of October of each year. Cost of deed, internal-revenue stamps, recording, & *etc.*, at the expense of the purchaser.

United States marshal's office, New Orleans, April 15th, 1869.

F. J. HERRON,
U. S. Marshal, District of Louisiana.

Received March 31st, 1869, and on the 31st day of March, 1869,
234 served on the New Orleans, Opelousas and Great Western Railroad Company by delivering to A. B. Seger, president of said company, at the office of said company, No. 69 Canal street, a notice to pay into my hands, within three days from the service of said notice, the sum of $316,840, due to the plaintiff, and the costs, and that, in default of such payment, I should seize and sell the property described in the petition filed and order made in the said cause, which accompanied the said notice and was served therewith, to satisfy the mortgage debt agreeably to the said order and according to law. And on the 5th day of April, 1869, more than three days having elapsed after the service of the said notice and the said petition, and the said order made on the same, and default having been made in the payment of the said sum, or any part thereof, I proceeded to seize and take into my possession the property described in the document hereto annexed, m'k'd A, and made part hereof. And after the expiration of the legal delay from the date of the service of notice of said seizure on the said N. O., Opelousas and Great Western Railroad Company, I advertised the said property for sale, by advertisements announcing the sale to take place at the entrance to the custom-
235 house on Old Levee street, between Canal and Custom-house streets, in this city, on the 25th of May, 1869, at 12 o'clock m.; said advertisements were inserted and published in three newspapers in the city of New Orleans, to wit, in the New Orleans Republican, Commercial, Bulletin, & N. O. Picayune, from the 16th day of April, 1869, to the day of sale, being full thirty days from the date of first notice given in said newspapers; said advertisements were inserted and published in said newspapers on the 16th, 20th, 24th, and 29th April, 1869, and on the 4th, 11th, 18th, and 25th of May, 1869. And, after having further complied with and performed all the additional previous legal requisites, and after the said property duly appraised, I did expose the same at public sale, at auction, according to law, at the said entrance to the custom-house, on Old Levee street, between Canal and Custom-house streets, in this city, on the said 25th day of May, 1869, at 12 o'clock m., when, after making due proclamation of said sale, and duly crying the said property and appurtenances, the same were adjudicated unto Charles Morgan, of the city of New York, he being the last and highest bidder thereon, for the price and sum of ($2,050,000,) two millions and fifty thousand dollars, of which said sum, according to the pub-
236 lished conditions of said sale, ($686,000) six hundred and eighty-six thousand dollars and the costs of suit, to wit, $15,825, were paid to me in cash, in U. S. Treasury notes, and the remainder of the purchase price, to wit, ($1,348,175) one million three hundred and forty-eight thousand one hundred and seventy-five, the said purchaser, Charles Morgan, assumes the payment of on the 1st day of April, 1889, with interest thereon at the rate of 8 % per annum, payable semi-annually, on the 1st day of April and 1st day of October of each year, until the final payment and extinction of the whole on the 1st day of April, 1889. And the said property and appurtenances, described in the advertisements hereto annexed, and more fully in the document m'k'd "A," also hereto annexed as part hereof, remains specially mortgaged for the final payment of the said balance of purchase price, with the interest, as aforesaid, due and accruing thereon.

New Orleans, Nov'r 20, '69.

(Signed) F. J. HERRON,
Late U. S. Marshal,
Per J. R. WEST,
Late D'y U. S. Marshal.

Superior district court for the parish of Orleans.

237 Continuance.—Minutes June 3rd, 1873.—(Tuesday.)

Present: The Hon. Jacob Hawkins, judge.

STATE OF LOUISIANA } No. 571.
vs. } " 2947.
CHARLES MORGAN. }

These cases, fixed for this day for trial, came on.

Present: A. P. Field, attorney-general, for plaintiff; H. J. Leovy & Miles Taylor for defendant. After hearing pleadings, evidence, and counsel, the court ordered these cases to be continued till Tuesday, June 17th, 1873, at 11 a. m.

Continuance.—Minutes June 17th, 1873.—(Tuesday.)

Present: The Hon. Jacob Hawkins, judge.

STATE OF LOUISIANA } No. 571.
vs. } " 2947.
CHARLES MORGAN. } Consolidated.

These cases, fixed for this day for argument, were ordered to be continued till Friday next, the 20th inst.

Continuance.—Friday, June 20th, 1873.—(Minutes.)

Present: The Honorable Jacob Hawkins, judge.

238 STATE OF LOUISIANA } No. 571.
vs. } " 2947.
CHARLES MORGAN. } Consolidated.

These cases, continued to this day for argument, were ordered to be continued till Monday, June 30th, 1873, at 11 a. m.

Continuance.—Monday, June 30th, 1873.

Present: The Hon. Jacob Hawkins, judge.

STATE OF LOUISIANA } No. 571.
vs. } " 2947.
CHARLES MORGAN. } Consolidated.

These cases, continued to this day for argument, were ordered to be continued to be called.

Agreement to submit cases.—Filed 187 .

Superior district cour' for the parish of Orleans, State of Louisiana.

STATE OF LOUISIANA } No. 571.
vs. } No. 2947.
CHARLES MORGAN. } Consolidated.

These cases are hereby submitted to the court for determination upon the pleadings, evidence, & etc., on file.

(Signed) LEOVY, MONROE & HART,
For Defendant.

239 (Do.) HENRY C. DIBBLE,
Asst. Attorney-General.

Reasons for judgment.—Filed November 21st, 1874.

Superior district court, p'h of Orleans.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } 571 2947 consolidated.

In this cause the plea is set up that the railroad was, by the statutes authorizing its construction, exempted from taxation for ten years after its completion, and the property assessed was a necessary appurtenance to the railroad.

It is questionable whether such a franchise as exemption from taxation in favor of the original company could be sold on execution to an individual purchaser of the road, to be held as private property. But if the exemption was a transferable franchise it amounts to nothing at the present time. Ten years after completion meant a bona-fide continuance and finishing of the road to Texas, which was long since abandoned; a construction of the law that it is now in force would be to encourage non-*non*-completion of the road. If such franchises are
240 passed to the purchaser they would imply reciprocal duties on his part, and at the same time encourage him to evade them. Such a construction of the intention of legislation would be absurd.

Let judgment be rendered for plaintiff.

Judgment.—Rendered November 21st, 1874.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } 571, 2947, consolidated.

This case submitted to the court for adjudication, and for the written reasons this day filed, the court considering the law and the evidence to be in favor of plaintiff, the State of Louisiana.

It is ordered, adjudged, and decreed that the plaintiff, the State of Louisiana, do have judgment against the defendant, Charles Morgan, in the full sum of eighteen thousand three hundred and sixty $\frac{25}{100}$ dollars, with five per cent. attorneys' fees, and all costs of suit.

Judgment rendered November 21st, 1874.
" signed December 5th, 1874.
241 (Signed) JACOB HAWKINS,
Judge.

Motion for new trial.—Filed November 21st, 1874.

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } 571, 2947, consolidated.

On motion of Leovy & Monroe, of counsel for Charles Morgan, defendant herein, it is ordered that the plaintiff show cause on Thursday, 3rd day of December 1874, why a new trial should not be granted in this

caes, for the reason that the decision rendered is erroneous, for the following causes:

1st. That the exemption created by statute in favor of the New Orleans, Opelousas and Great Western Railroad Company in 1853 was a franchise, and having been given for a valuable consideration become part of the contract between the State and its railroad company, and could not be impaired by subsequent legislation.

2nd. The the said franchises were transferable and could be mortgaged by virtue of the statute of 1853, section 9, p. 121; act of 1854, p. 112, and act of 1856, p. 205.

3. Said franchise was mortgaged to the holders of bonds issued by said railroad company by virtue of a resolution of the board
242 of directors of said company, 17th March, 1859, and by act before S. Magner, N. P., on the first of April, 1859.

4th. The said company failing to pay their bonds and coupons, said franchise and other property of said company were sold by decree by U. S. circurt court for district of Louisjana, and Charles Morgan purchased the same March 30th, 1869.

5th. There is error in judgment in imposing penalties on the defdt.

6. The testimony proves that defendant has expended enormous sums on the road for the purpose of completing it, and there never has been any intention or desire to abandon it—that it is deemed more profitable to own a completed road than a short uncompleted road with the franchise of exemption from taxation.

Sheriff's return on foregoing motion.—Filed December 2, 1874.

Received Nov. 30, 1874, and on the same day served a copy of within rule on H. C. Dibble, asst. attorney-general, in person. Returned same day.

(Signed) HENRY BENIT,
Dy. Sheriff.

Shffs. fees $— 50c.

Rule for new trial refused.

Minutes Dec. 3rd, 1874.

243 Present, The Honl. Jacob Hawkins, judge.

STATE OF LOUISIANA } No. 571.
vs. } " 2947.
CHARLES MORGAN. } Consolidated.

The rule for a new trial, assigned for this day for trial, came on.

Present: Leovy, Monroe & Hart, for plaintiff in rule; Henry C. Dibble, assistant attorney-general, and W. R. W. R. Mills, representing the State of Louisiana. When, after hearing pleadings, evidence, and counsel, and the reasons orally assigned by the court, it is ordered that said rule for a new trial be refused.

Motion and order for appeal.—Filed December 10*th*, 1874.

Superior district court for the parish of Orleans, La.

STATE OF LOUISIANA } No. 571.
vs. } " 2947.
CHARLES MORGAN. } Consolidated by order of court.

On motion of Leovy & Monroe, of counsel for Charles Morgan, defend-

ant in the above-entitled suit, (with which suit of State of Louisiana vs. Morgan's railroad, No. 2947, was consolidated by order of this honorable court,) the assistant attorney-general being present, and on repre-
244 senting to the court that defendant is advised and believes that there is error to his prejudice in the final judgment rendered in said consolidated suits on the twenty-first day of November, 1874, and signed on the fifth day of December, 1874, and further representing that said defendant desires to have a suspensive appeal from said judgment:

It is ordered that Charles Morgan, defendant herein, be granted a suspensive appeal, returnable to the supreme court of this State on the first Monday of January, 1875, (there not being time enough before said period to give legal notices and to prepare the record,) upon his giving bond, conditioned as the law directs, with good and solvent security, in the sum of thirty-one thousand dollars, ($31,000.00,) and on his otherwise complying with the requirements of law.

No objection to form of notice for appeal or to bond.

(Signed) HENRY C. DIBBLE,
Asst. Atty. General.

Appeal-bond.—Filed December 10th, 1874.

Know all men by these presents that we, Charles Morgan, of New York, (herein acting by Charles A. Whitney & Co., his agents,) as
245 principal, and William S. Pike, residing in New Orleans, La., as surety are held and firmly bound unto John Burke, the clerk of the superior district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of thirty-one thousand dollars, ($31,000.00,) for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans on this tenth day of December, in the year of our Lord one thousand eight hundred and seventy-four:

Whereas, the above-bound Charles Morgan has this day filed in open court a motion for appeal from a final judgment rendered against him in the suit of State of Louisiana vs. Charles Morgan, (being said suit and that of State of La. vs. Morgan La., & Texas R. R'd, No. 2947, consolidated,) No. 571 of the docket in the superior district court for the parish of Orleans, on the twenty-first day of November, 1874, and signed on the fifth day of December, 1874:

Now, the condition of the above obligation is such that the above-bound Charles Morgan shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said William S. Pike
246 shall be liable in his place.

(Signed) CHAS. A. WHITNEY & CO., AGENTS. [SEAL.]
(S ") WILLIAM S. PIKE. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) C. L. MAYOR.
(") A. V. DUVALDE.

(Endorsed:) Satisfactory.
(Signed) HENRY C. DIBBLE,
Asst. Atty. General.

Clerk's certificate.

I , clerk of the superior district court for the parish of Orleans, do hereby certify the foregoing three hundred and seven pages to contain a true, correct, and complete transcript of all the proceedings, documents filed, as well as all the testimony and evidence adduced upon the trial of the cases, wherein the State of Louisiana is plaintiff and Charles Morgan is defendant, and numbered on the docket as 2947 (originally instituted in eighth district court and numbered 631 thereof) and 571; said cases being consolidated by agreement of counsel and tried as one suit; except the record of U. S. circuit court in case of Charles Morgan versus The New Orleans, Opelousas and Great Western Railroad
247 Company, No. 5788, of which record the petition, and order for executory process thereon, and writ of seizure and sale, with full and complete return of U. S. marshal thereon, only are copied, as per agreement copied on page 63 of this transcript.

In testimony whereof I hereunto set my hand and affix the impress of the seal of our said superior district court for the parish of Orleans on this 24th day of December, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-ninth.

[SEAL.] (Signed) JOHN BURKE, *Clerk.*

Supreme court of the State of Louisiana.

Motion and order to fix case for trial.

Minutes.—Monday, April 5th, 1875.

The court was duly opened pursuant to adjournment. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, William G. Wyly, Philip H. Morgan, associate justices; absent, Rufus K. Howell, associate justice.

248 STATE OF LOUISIANA *vs.* CHARLES MORGAN. } No. 5519.

On motion of J. Q. A. Fellows, esq., of counsel for plaintiff, it is ordered by the court that this cause be called and fixed for trial with preference.

Supreme court of the State of Louisiana.

Case submitted.—Friday, April 23rd, 1875.—(Minutes.)

The court was duly opened. Present, their honors John T. Ludeling, chief justice, and Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices; absent, James G. Taliaferro, associate justice.

STATE OF LOUISIANA *vs.* CHARLES MORGAN. } No. 5519.

This case was called for trial, and, having heard argument from William Reed Mills, esq., of counsel for plaintiff & appellee, and Henry J. Leovy, esq., of counsel for the defendant and appellant herein,

The court took said case under advisement upon the briefs on file and to be filed within seven days.

Judgment and decree.

249 Minutes.—Monday, January 17th, 1876.

The court was duly opened pursuant to adjournment. Present, their honors James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices; absent, John T. Ludeling, chief-justice.

His honor Justice Wyly pronounced the judgment and decree of the court in the following case:

STATE OF LOUISIANA
vs. } No. 5519.
CHARLES MORGAN.

On appeal from the superior district court for the parish of Orleans it is ordered that the judgment herein in favor of plaintiff be affirmed with costs.

Mr. Justice Howell: I concur in the conclusion and decree in this case.

Mr. Justice Morgan: I dissent in this case and reserve the right to file my reasons therefor hereafter. I feel authorized to state that Chief-Justice Ludeling dissents also.

Opinion of the court.—Filed Jany. 17th, 1876.

STATE OF LOUISIANA
vs. } No. 5519.
CHARLES MORGAN.

Appeal from the superior district court for the parish of Orleans.

250 Mr. Justice Wyly: This is a controversy between the State and Charles Morgan, in regard to the collection of taxes assessed against him on certain real estate, rolling-stock, and ferry-boats, described in the suit.

The defence is:

1°. This property is not liable to taxation, because it was acquired by Charles Morgan from the New Orleans, Opelousas and Great Western Railroad Company, and by the second section of the charter of said corporation all its property was exempted from taxation.

2°. The assessment of the property was excessive. As the record does not present a case entitling defendant to relief on the second ground, we will turn to the first, which presents the important question in this litigation.

Before entering upon the discussion, however, it will be necessary to notice some of the provisions of the charter of the New Orleans, Opelousas and Great Western Railroad Company, and to state some of the facts disclosed by the record.

By act 149 of the acts of 1853 the general assembly incorporated "The New Orleans, Opelousas and Great Western Railroad Company," "for the purpose of constructing, working, and maintaining a railroad from Algiers, on the opposite side of the Mississippi River from New Orleans,

251 and thence westward to Bayou LaFourche; thence to Berwick's Bay; thence to Washington, or near it, on the Courtableau, in the parish of St. Landry; and from thence hereafter to be con-

tinued to the point on the Sabine River most favorable for the purpose of continuing said road through the State of Texas to El Paso, on the Rio Grande."

Section 1st creates said railroad company into a body corporate and politic with "full power to sue and be sued, plead and be impleaded, to do and perform all other acts, and enjoy all the rights and privileges incident to corporations."

Section 2 provides "that the capital stock of said company shall be exempt from taxation, and its works, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances, shall be exempt from taxation for ten years after the completion of said road within the limits of this State."

Section 3 provides "that the president, engineers, clerks, agents, and servants of said company shall be exempt from jury duty and from military duty, except in case of invasion or insurrection."

Section 5 fixes the capital stock of said company at six millions of dollars, divided into 240 thousand shares.

Section 9 provides "that the president and directors of said New Orleans, Opelousas and Great Western Railroad Company may borrow, from time to time, such sums of money as may be required for the
252 construction of said road over and above the amount received from subscriptions to its capital stock, provided the amounts borrowed do not exceed six millions of dollars; and said president and directors be, and are hereby, authorized to secure said loans by mortgaging the property of the company, in whole or in part, as they may deem expedient; and any mortgage so given need not be re-inscribed to continue said mortgage in force."

Section 11 provides "that said New Orleans, Opelousas and Great Western Railroad Company shall have perpetual existence, unless said corporation is dissolved by a vote of three-fourths of its stockholders at a meeting called specially for the purpose, or unless said corporation shall fail or be insolvent." * * *

These are the only sections of this statute that need be noticed.

In 1856 the general assembly passed a general law, being act No. 194, entitled "An act to extend the powers of railroad companies."

Section 1st provides "that in addition to the powers conferred by law upon railroad companies, any railroad company established under the laws of this State may borrow, from time to time, such sums of money as may be required for the construction or repairs of any railroad, and for this purpose may issue bonds or their obligations, secured by
253 mortgage upon the franchises and all the property of said companies, and payable at such times and places as the president and directors may designate, with power to sell, pledge, or otherwise dispose of said bonds, on such terms as the president and directors may deem expedient."

Early in 1857 the first division of the New Orleans, Opelousas and Great Western Railroad was completed to Berwick's Bay, a distance of eighty miles.

For the purpose of obtaining means for the further completion of the road, in March, 1859, the board of directors of said company passed resolutions authorizing the president to issue 2,000 bonds of the New Orleans, Opelousas and Great Western Railroad Company, for one thousand dollars each; and to secure the payment of said bonds and the interest thereon by a first mortgage on the first grand division of the railroad from Algiers to Berwick's Bay, together with the land over which said

road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to this portion of the road.

Under this authority and the power conferred by the statutes quoted, the president in April, 1859, issued the bonds and executed the
254 mortgage on the first division of the road extending from Algiers to Berwick's Bay.

With the funds arising from this source the company continued the work and almost completed the entire grading to Opelousas, a distance of 85 miles beyond Berwick's Bay, when in 1862 further operations were discontinued on said road on account of the war, the road having been seized by the military forces of the United States.

When the road was restored to the company, in 1866, it made every possible effort to resume work and to complete the road, but without success.

No work has since been done by the company.

The result of its labors was the completion of the first division of the road, a distance of 80 miles, and the clearing and partial grading of the second division, extending from Berwick's Bay to Opelousas, a distance of 85 miles. The third division, from Opelousas to the Sabine, a distance of 98 miles, remain untouched.

In 1869 Charles Morgan, the holder of certain of the mortgage-bonds, foreclosed the mortgage on the first division and purchased it, under executory process issued by the United States circuit court.

255 In 1870 he purchase', under ordinary writs fier*a* facias issued in certain judg'ts against s'd company in the district courts of the parish of Orleans, all and singular the balance of the property of the New Orleans, Opelousas and Great Western Railroad Company; subsequently, to wit, on 12 December, 1871, Charles Morgan conveyed to the New Orleans, Mobile and Texas Railroad Company "the franchises, rights, and privileges now owned by said Charles Morgan for the construction and maintenance of a line of railroad running from Brashear City northwestwardly so as to connect with the main line of railroad of the New Orleans, Mobile and Texas Railroad, at or near Vermillionville, and thence northwestwardly to the Red River, together with all the lands and rights of way for or in respect to such railroad from Brashear City northwestwardly to such point of connection at or near Vermillionville, and likewise for a railroad north of that point to Red River, which the said Charles Morgan now owns or is entitled to, and the benefit of all work heretofore done and improvements heretofore made upon the same in the shape of grading or otherwise." * * *

Subsequent to this conveyance the New Orleans, Mobile and Texas Railroad Company expended from $80,000.00 to $100,000.00 on the
256 road from Brashear City to Vermillionville, and in A'gust, 1872, suspended all further operations on said road.

Charles Morgan since his purchase has expended large sums in improving the first division from Algiers to Berwick's Bay. But no work has been done by him on the road beyond Berwick's Bay.

This statement of facts and quotation from the statutes applicable to this case bring us to the consideration of the following questions:

1°. Was the exemption from taxation stated in the second section of the charter of said company transferable?

2°. If so, was it conveyed to Charles Morgan by the purchase which he made of the railroad?

3°. If so, is he entitled to claim said exemption from taxation in view of the fact that said railroad has not been completed within the limits of the State, although more than twenty years have elapsed since the charter was granted?

1°. All legislative contracts must be construed most favorable to the State if there is any doubt as to their meaning or interpretation. And a party claiming exemption from taxation must come strictly within the provisions of the statute granting it. (1 Black, 436; 8 Wallace, 431.)

257 Considering the provisions of sections 2, 3, and 11 of the charter, we are of opinion that the exemption from taxation granted to the New Orleans, Opelousas and Great Western Railroad was not a transferable right; that the State never intended to confer on the grantee the power to convey this right or privilege to another corporation, or to a natural person. Mark the language of the statute which declares, not that certain property shall be forever exempt from taxation, but "that the capital stock of said company shall be exempt from taxation, and its works, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of this State."

Also consider the phraseology of section 3, which declares "that the president, engineers, clerks, agents, and servants of said company shall be exempt from jury duty and from military duty, except in case of invasion or insurrection."

Can this right of exemption for a limited time from taxation, conferred in precise terms upon a certain railroad corporation, and this right of exemption from jury and military duty conferred upon the "president, clerks, agents, and servants of said company," be extended by any

258 fair construction of the statutes so as to authorize and empower the grantee to transfer these rights or privileges to another corporation or to a natural person?

We think not. The consideration to the State was the stipulation or engagement of the company to build the railroad to the Texas line.

For this, in addition to other privileges granted, the State agreed to exempt the capital stock and other property of said corporation from taxation for ten years after the completion of the work, and also to exempt from jury and military duty the officers, agents, and servants of said company.

The grant of these privileges was to the person of the grantee. It was never intended to attach *to attach* to the property of the corporation and to follow it into third hands when sold on execution.

The case of New Jersey vs. Melier, (7th Cranch, 499,) cited by the defendant, was not like the one now before the court.

There the land purchased by the State for the Indians was exempted by a legislative act from taxation, and the court maintained the exemption of such land in third hands, on the ground that the land had been sold with the assent of the State, with all its privileges and im-

259 munities, and that the "privilege, though for the benefit of the Indians, is annexed, by the terms of the act which created it, to the land itself, not to their persons."

The case of the Home of the Friendless vs. Rouse (8 Wal., 431) closely resembles the one now under consideration, so far as the point in discussion is concerned.

There was a statute which gave to a charitable institution a charter and declared by it that the property of said corporation shall be exempt from taxation, and the court held that as soon as the corporation was organized the contract became completed; "and its property is not subject to taxation so long as the *the* corporation owns it and applies it to the purpose for which the charter was granted."

Here, to encourage the New Orleans, Opelousas and Great Western Railroad Company to build the road to the Sabine or the Texas line, the State, in precise terms, agreed to exempt its capital stock and other property from taxation for ten years after the completion of said road; but during this period it was manifestly the intention that the exemption should apply only to the property owned by said corporation.

2°. But assuming the transferability of the right or privilege in question, the inquiry is, Was it conveyed to Charles Morgan by the pur-
260 chase which he made of the railroad?

However difficult it may be to form a satisfactory opinion as to the extent of the franchises of a railroad company that are liable to pass to a purchaser under the foreclosure of a mortgage authorized by legislative enactment, on account of the conflicting adjudications of the courts in different States, we find no difficulty in arriving at the conclusion that the franchises of a railroad corporation cannot be alienated without the consent of the State which granted them. As all franchises belong exclusively to the State, no one will be permitted to possess and administer any of them without the consent of the State.

When the State covenants and agrees that a certain corporation shall administer certain franchises, the ordinary judgment-creditors of that corporation may seize and sell its property, but not the franchises. They are beyond the reach of an ordinary execution.

It is a state of prerogative to put the admi'stration of its franchises into such hands as it may choose. And they cannot be transferred to other hands without the consent of the State.

When, in 1853, the State gave to the New Orleans, Opelousas and Great Western Railroad Company corporate existence and the
261 franchises necessary to construct and operate a railroad from Algiers to the Sabine, together with a limited exemption from taxation of its capital stock and other property, the State did not consent that these franchises should be transferred to third hands by sale on execution by the ordinary judgment-creditors of said corporation.

Therefore the sale of 1870, by the ordinary judgment-creditors of said corporation, to Charles Morgan, of the unfinished division of the New Orleans, Opelousas and Great Western Railroad, extending from Berwick's Bay to Opelousas, and the division of 98 miles from Opelousas to the Sabine, (upon which no work had ever been done,) transferred to the purchaser whatever property the corporation had embraced within those divisions; but the person of the corporation and the franchises which the State had committed to its hands were not alienated.

The fact that he had previously bought the first division under the foreclosure of the mortgage, which the corporation was authorized to give, gave to Charles Morgan no greater rights under the adjudication of the ordinary executions than any other purchaser would have acquired.

Section 9 of the charter of 1853 authorized the corporation to borrow money from time to time, as might be required for the construc-
262 tion of said road, and "to secure said loans by mortgaging the property of the company in whole or in part as they shall deem expedient;" but no authority was given to mortgage the franchises of said corporation.

The State, however, in 1856 passed a general law declaring that "any railroad company established under the laws of this State may borrow, from time to time, such sums of money as may be required for the construction or repairs of any railroad, and for this purpose may issue bonds or their obligations secured by mortgage upon the franchises and property of said company." * * *

Until the act of 1856 the franchises of a railroad corporation in this State could not be mortgaged, otherwise that act would have been unnecessary.

Assuming, for the purpose of argument, that the privilege of exemption from taxation conferred on the New Orleans, Opelousas and Great Western Railroad Company was transferable under the foreclosure of the mortgage of all its franchises and all its property, pursuant to the provision of the act of 1856, the question is, did Charles Morgan acquire this privilege by virtue of the adjudication to him in 1869 of the first grand division of the railroad under the foreclosure of the mortgage?

Did he by that adjudication succeed to all the franchises and
263 property of said corporation?

He did not. He only acquired what was embraced in the mortgage, to wit, the first grand division of the railroad from Algiers to Berwick's Bay, "together with the land over which said road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to this portion of the road."

Taking the construction most favorable to the State, as we will do in all contracts of this kind, and the conclusion is inevitable that the mortgage and alienation of the rights and franchises applicable to this division of the road did not embrace the exemption from taxation which was granted by the charter to the capital stock and other property of said corporation.

The obligation underlying this right of exemption from taxation was an indivisible obligation, and the obligation underlying the right of exemption of the officers and employés of said corporation from jury duty and from military duty was also an indivisible obligation. Neither of these can be broken up at the option of the incorporators and divided into as many obligations and rights as they may desire.

The right of corporate existence cannot be divided up and made
264 applicable to the different divisions of a railroad, nor can the right to expropriate property be parcelled out among the purchasers of the various divisions of a railroad. Several corporations possessing the rights and franchises stated cannot spring into existence by the act of a railroad company in mortgaging and selling separate divisions of their road, with the rights and franchises applicable to each division; because this would be the exercise of a prerogative by a creature that belongs exclusively to its creator.

Our conclusion is that Charles Morgan did not by the adjudication under the foreclosure of the mortgage on the first division of the road, with the rights and privileges applicable to it, acquire the privilege of exemption from taxation; assuming that such privilege was acquirable un' a mortgage and adjudication of all the franchises and property of the New Orleans, Opelousas and Great Western Railroad Company pursuant to the act of 1856.

3d. But, for the purpose of argument, let us assume that Charles Morgan by the adjudication stated succeeded to all the rights and franchises of the corporation, including the right of corporate existence and the privilege of exemption from taxation stated in the charter; in
265 other words, let us assume that by the purchase of all the shares of stock, or otherwise, Charles Morgan stood before the court representing the New Orleans, Opelousas and Great Western Railroad Company, and the question was whether said corporation was entitled to claim the exemption from taxation mentioned in the charter, in view of the fact that the railroad has not been completed within the limits of the State, although more than twenty years have passed since the charter

was granted, & our conclusion would be, from the evidence in the record, that the right of exemption could not be successfully maintained.

The charge, that the State in assessing the taxes now sought to be collected has violated the obligation of contract with the New Orleans, Opelousas and Great Western Railroad Company, cannot be maintained when the second section of the charter is read in light of the facts disclosed in the record.

The State never agreed to exempt from taxation forever the property of that corporation.

The stipulation in the charter was that the capital stock and other property of said company "shall be exempt from taxation for ten years after the completion of said road within the limits of this State."

266 The consideration of the grant of this privilege was, of course, the promise of the corporation to prosecute to completion the work of building the railroad to the Sabine or Texas line. No time was fixed for the completion of the work, but the understanding doubtless was that it should be completed within the time usually occupied in accomplishing such enterprises.

Now, what has the corporation done towards completion of the road, and what is the prospect of its completion?

Eighty miles were promptly completed, eighty-five miles beyond that have been partially graded, and ninety-eight miles of the road remain untouched. This is all that has been accomplished since the charter was granted in 1853, a period of over twenty years. Besides, there is no prospect of the completion of the road; no work having been done under the charter beyond Berwick's Bay since 1862, a period of over ten years. Over twenty years have elapsed, and the road has not been half completed. Over ten years have passed, and not a rod has been graded, or a rail laid, or a bridge built, or any work whatever done on the unfinished divisions of the road by the corporation or by Charles Morgan.

267 In the face of such a palpable abandonment of the enterprise, and such a flagrant breach of contract, it is with bad grace that the charge is made by the defendant that the State, in making the assessment and demanding the taxes on the property described in this suit, is impairing the obligation of her contract.

By whose fault is it that after a period of over twenty years the road has not been half completed?

By whose neglect is it that for over ten years no work has been done toward completing the unfinished divisions of the road?

To permit the corporation by its own derilictions to prolong the period of exemption from taxation, as fixed by the charter for ten years after the completion of the work, to an indefinite period, (for there is no prospect of a completion of the road,) would be to allow it to take advantage of its own wrong. And what the corporation cannot do, the defendant claiming under it cannot accomplish.

How can he claim the exemption from taxation for the property he acquired, when it was conditioned upon the completion of the road, and that enterprise has been abandoned for years?

268 Will a party who has wholly failed to give or perform the consideration of a contract be permitted to hold the opposite party to the obligation contracted as the equivalent for such consideration?

Between ordinary litigants a void contract, or a contract the consideration of which has wholly failed, cannot successfully be opposed to the enforcement of a legal right. The State certainly has in its own courts the right which it accords to every litigant, and it can certainly

show the invalidity of a contract set up to defeat the right which it asserts to its revenues. If the principle contended for by the defendant be true, and no taxes can be collected on the property comprised within the first division of the road because the other divisions have not been completed, when will the State ever be able to derive any revenue from the property in question?

By this theory, in order to make a limited exemption from taxation a perpetual one, all that is necessary is to let the unfinished divisions remain unfinished, and the desired result will be accomplished.

Such a propoposition cannot be maintained. The corporation contracting with the State, when the charter was made and accepted, cannot, by its own laches or its own derelictions, make the obligation of the State more onerous; it cannot make a conditional and limited grant of immunity from taxation an absolute and perpetual one.

269 It is therefore ordered that the judgment herein in favor of plaintiff be affirmed with costs.

I concur in the conclusion and decree in this case.

(Signed) R. K. HOWELL.

Dissenting opinion.—Filed May 22nd, 1873.

Mr. Chief-Justice LUDELING.

This suit is to collect taxes alleged to be due by the defendant on account of his Louisiana and Texas railroad.

The defendant claims that the capital stock and all property attached to the railway is exempt from all taxation.

The New Orleans, Opelousas and Great Western Railroad Company was chartered by act of the legislature in April, 1853.

The second section of the charter declares "that the capital stock of said company shall be exempt from taxation, and its works, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of this State." And act No. 194 of

270 the general assembly of 1856 provides "that, in addition to the powers conferred by law upon railroad companies, any railroad company established under the laws of this State may borrow, from time to time, such sums of money as may be required for the construction or repairs of any railroad, and for this purpose may issue bonds or their obligations, secured by mortgage upon the franchises and all the property of said companies," &c. (Act of 1856, p. —.)

Section 7 of the charter of the company also authorized the company to borrow money on bonds, and "to secure said bonds by mortgaging the property of the company in whole or in part as they shall deem proper." (Acts of 1853, p. 121.)

Under these statutes the company executed two thousand bonds of $1,000 each, and secured their payment by mortgaging the completed grand division of the road extending from N. Orleans to Brashear, including depots, lands, equipment, franchises, &c.

After the war this mortgage was foreclosed, and Charles Morgan bought the railroad, with its franchises, from New Orleans to Brashear—that is, the property covered by the mortgage.

271 Subsequently he purchased the other portions of the road to the State line, which was partially graded, with the franchises, &c. Thus he became the owner of the entire road, with all the rights and franchises of the original company.

I am at a loss to imagine why the property is not exempt from taxation. The legislature had unquestionably the power to exempt the property from taxation—and it did exempt it—and it authorized the franchises to be mortgaged and sold. Morgan acquired at public sale all the property and franchises of the company. Is not the exemption from taxation a franchise—property?

At this day this is not an open question in this country. (7 Cranch, 165; 1 Black, 536; 8 Wall., 437; 13 Wall., 264–269; 16 Wall., 244; 18 Wall., 392; 20 Wall., 36; 21 Wall., 492; 11 Ala., 437; 28 Ala., 321; 4 Mets., 200; 30 Vermont, 182; 70 Penn., 355; 17 Conn., 40; Redfield on Railways, 477–480.)

By the textual provisions of the code, not only corporeal objects may be sold, "but also incorporeal things, such as a debt, an inheritance, a servitude, or any other rights." (C. C., 2449.)

Franchises, therefore, are incorporeal hereditaments, known as a species of property, as well as any estate in hands. Bouvier says "a
272 franchise is a certain privilege conferred by grant from the government." Worcester defines it to be "a certain privilege or exemption bestowed by grant from the government and vested in individuals—immunity."

Had the franchise been forfeited? I think not. There is no limit to the grant, except that it should cease to exist after ten years after the completion of the road to the State line. The road is not yet completed. It is said, however, that the defendant is not trying to complete the road. Be that as it may, no steps have as yet been taken to forfeit the grant; and, in my opinion, it cannot be done in this suit.

I therefore dissent from the opinion of the majority of my associate justices.

Judge Morgan also dissented, p. 249.

Supreme court—State of Louisiana.

Petition for rehearing.—Filed Jan'y 22d, 1876.

STATE OF LOUISIANA *vs.* CHARLES MORGAN. } No. 5519.

We are constrained in this case to respectfully ask for a rehearing.

The fact that this honorable court is nearly equally divided in
273 the reasoning and judgment rendered, that the case involves a very large amount, and that issues of a grave constitutional character are presented, are sufficient reasons, we trust, to justify a hope for a full and most ample investigation.

In the reasoning upon which the judgment is based, it is very truly said that "all legislative contracts must be construed most favorably to the State if there is any doubt as to their meaning or interpretation." But it is equally true that "as every contract is to be construed to accomplish the intention of the parties to it, if there is no ambiguity, and their intention clearly appears on reading the instrument, it is as much the duty of the court to uphold and sustain it as if it were a contract between private parties," (8 Wallace, 437;) "and without regard to its supposed injurious effect upon the public interest," (13 Wallace, 267;) and "it is true, that exemptions from taxation are to be construed strictly; but where the power has been once conferred, it is not to be crippled or destroyed by strained interpretations of subsequent laws."

(Lacey's Dig., 752; Orange R. R. Co. vs. Alexandria, 17 Gratton Va. Rep., p. 176.)

We understand this honorable court to decide this case on the follow-
lowing three points:

274 First. Was the exemption from taxation stated in the second section of the charter of the company transferable?

Second. If so, was it conveyed to Charles Morgan by the purchase which he made of the railroad?

Third. If so, is he entitled to claim said exemption from taxation, in view of the fact that said railroad has not been completed within the limits of the State, although more than twenty years have elapsed since the charter was granted?

The first question naturally divides itself into two propositions:

1st. Was the privilege granted, of exemption from taxation, a franchise?

2d. Are franchises property that can be sold?

In many adjudications of the U. S. Supreme Court on these points, reported from the 7th Cranch (469) to 18th Wallace, (392,) we find the affirmative of these propositions asserted in every instance.

1st. Is the privilege of exemption from taxation a franchise?

A franchise is by lexicographers defined to be "a certain privilege conferred by grant from the government," etc.; "a certain privilege or exemption conferred by grant from the government and vested in individuals—immunity."

275 The Supreme Court of the United States, as early as the year 1812, decided this point, and also that it could pass into other hands. They say, speaking of an act exempting lands of the Indians from taxation:

"This is certainly a contract clothed in forms of unusual solemnity. The privilege, though for the benefit of the Indians, is annexed by the terms which create it to the land itself, not to their persons. It is for their advantage that it should be annexed to the land, because in the event of a sale, on which alone the question could become material, the value would be enhanced by it. The land has been sold with the assent of the State, with all its privileges and immunities. The purchaser succeeds, with the assent of the State, to all the rights of the Indians. He stands, with this respect to the land, in their place and claims the benefit of their contract. This contract is certainly impaired by a law which would annul the essential part of it."

In Jefferson Bank vs. Shelley (1 Black, 536) the U. S. Supreme Court recited what was said in the New Jersey case, and adds: "This court than said, the privilege, though for the benefit of the Indians, is annexed by the terms which create it to the land itself, not to their persons. In the event of a sale the privilege was material, because

276 the exemption from taxes enhanced its value."

In what respect did the grant in that case differ from this? Surely it will not be contended that in the case now before the court the grant of exemption was to the persons of the stockholders of the New Orleans, Opelousas and Great Western Railroad Company.

We cited the case of the Home of the Friendless (8 Wallace, 437) for the sole purpose of showing, what we are now trying to demonstrate, that exemption from taxation is a franchise, and that case is directly in point. The court say:

"'All property of said corporation shall be exempt from taxation' are the words used in the act of incorporation, and there is no need of supplying any words to ascertain the legislative intention. To add the

word 'forever' after the word taxation, could not make the meaning any clearer. It was undoubtedly the purpose of the legislature to grant to the corporation a valuable franchise, and it is easy to see that the franchise would be comparatively of little value if the legislature, without taking direct action on the subject, could at its will resume the power of taxation."

In the two cases reported in 13 Wallace, pages 264 and 279,
277 the exemption is treated as a very valuable franchise.

In 16 Wall., 246, (Humphrey vs. Pegues,) the court say, "a more important or more comprehensive than a perpetual immunity from taxation can scarcely be imagined."

But if any doubt previously existed on this subject, it was removed by the decision in 1873, in the case of Trask vs. Maguire, (18 Wall., p. 392,) which is the latest we find. In that case it was not only decided that immunity from taxation was a franchise, but it decided it could be sold under executory process in like manner as other property. We will again refer to that case.

If, then, any legal point can be settled by repeated and uniform decisions of the highest court of the land, we think it is settled that exemption from taxation is a franchise.

We beg to add that in this last case cited (18 Wallace, 392) the thing exempted from taxation was the capital stock, engines, appurtenances, etc., precisely as in this case. So also in the case reported in 16 Wallace, page 244, it was the stock, etc., that was exempted.

2d. Are franchises property that can be sold?

We have seen that in the case reported in 7 Cranch, p. 165,
278 in speaking of the immunity from taxation, the court say the privilege "is attached to the land itself, not to their persons. It is for their advantage that it should be annexed to the lands, because in the event of a sale, on which alone the question could become material, the value would be enhanced by it." "The land has been sold, with the assent of the State, with all its privileges and immunities." "He stands, with respect to this land, in their place," etc. And this in substance is repeated in the later case of Jefferson Bank vs. Shelley, 1st Black, 436.

The U. S. Supreme Court has recently decided this point in language that admits of no misconception. In the case of Trask vs. Maguire (18 Wallace, page 105) they use this clear and unambiguous language: "The act under which the sale was made provided that the purchasers of the road should have all the rights, franchises, privileges, and immunities which were enjoyed by the defaulting company under its charter and laws amendatory thereof, subject to the limitations and conditions therein contained and not inconsistent with the act authorizing the sale. The new company thus acquired all the immunity from taxation which the original company had possessed, if it were
279 competent for the legislature at the time, under the new constitution, to confer this privilege;" the qualification referring to the provision in the constitution of Missouri, which stated no property should be exempted from taxation at a certain time, and the question presented was whether, as to time, the grant was affected by the constitutional prohibition. This case, then, and the others cited, the latest of the Supreme Court of the United States, on the construction of the language of the United States Constitution, emphatically declare that immunity from taxation is a franchise; that it is attached to the property, and that it can be sold like other property to the highest bidder at a public auction.

This honorable court in its decision in this case, construing the section of the charter on which we rely, says: "Mark the language of the statute, which declares, not that certain property shall be forever exempt from taxation, but that the capital stock of said company shall be exempt from taxation, and its works, fixtures, workshops," etc. With all due deference to this honorable court, we respectfully ask if it can be doubted that capital stock, works, fixtures, etc., are property? In the hands of these stockholders, who paid a very large price for these things, they were certainly regarded as "property." In the
280 most of the cases cited by us it was the stock and railroad appurtenances that were exempted.

We now propose to apply these decisions (and some others) to the case before us.

We think that there can be but little doubt that an immunity from taxation is a franchise, and that franchises are property; that such franchise can be mortgaged in connection with other property, or a railroad, or sold with it.

In this case the company were authorized by two acts of the Louisiana legislature to mortgage all their property.

By act of 1853, p. 121, section 9, the company were authorized to "borrow, from time to time, such sums of money as may be required for the construction of said road, over and above the amount received from subscriptions to its capital stock, provided the amounts borrowed do not exceed six millions of dollars; and said president and directors be, and are hereby, authorized to secure said loans by mortgaging the property of the company, in whole or in part, as they shall deem expedient," etc.

The company were thus fully empowered to mortgage all their property to secure the payment of the money they might borrow. No other statute was necessary nor was enacted for the purpose of enlarg-
281 ing the power of the company. This honorable court says that "until the act of 1856 the franchises of a railroad corporation in the State could not be mortgaged; otherwise that act would have been unnecessary. This is true as to other railroad companies, but not as to the New Orleans, Opelousas and Great Western Railroad Company. The act was not passed, as we conceive, to supply any defect in the power specially vested in that company, but to make general what before had been special. The act of 1856 gave to all railroads the power to mortgage all their property; two acts of 1853 gave the right to the Opelousas Railroad Company and to the Jackson Railroad Company.

As to what we claim under the mortgage, this point, however, is not practically important, because the mortgage under which the road to Brashear was sold was made after the passage of the act of 1866, to wit, in April, 1859. (Record, p. 108.)

The act of 1856 is certainly ample for the purpose. Section first (p. 205) declares "that, in addition to powers conferred by law on railroad companies, any railroad established under the laws of this State may borrow, from time to time, such sums of money as may be required for the construction or repairs of any railroad, and for this purpose may issue bonds on their obligations, secured by mortgage upon the
282 franchises and all the property of said companies," etc.

The record shows that by virtue of these acts the company did, in 1859, issue bonds, did mortgage the completed part of the road and the franchises, did fail to pay coupons on the bonds, and that said completed part of the road was sold to satisfy the debt created by the issu-

ance of the bonds, and thus Charles Morgan became the purchaser at marshal's sale for the sum of $2,050,000.

But there remained unsold the remnant of the property beyond Brashear, and the appurtenances, etc., thereto belonging. Judgment was obtained against the company for the unpaid balance of the debt. Execution issued, and Mr. Morgan became the purchaser of all the remaining property of said company, "including the franchises of the New Orleans, Opelousas and Great Western Railroad Company granted by the State of Louisiana to the said company, and giving it the right, set forth in its charter and act of incorporation, to construct, maintain, and run and operate a railroad," etc. (Record, 169.)

And for this property Mr. Morgan paid $250,000 cash. All these facts are not disputed.

283 This honorable court say: "We find no difficulty in arriving at the conclusion that the franchises of a railroad company cannot be alienated without the consent of the State which gave them." Supposing this proposition to be true, (though other courts have decided differently,) did not the State consent when it authorized this company by the act of 1853, and all companies by the act of 1856, to mortgage their property and franchises, that they should be sold if the companies failed to comply with their obligations to secure which the mortgages were given? Can it be contended that the franchises could be mortgaged but not sold?

All the franchises of the road for the first division were mortgaged with the consent of the State, expressed in the act of 1856, and so far as that mortgage and the sale under it were concerned we cannot see how the right thus acquired can be impaired without a flagrant and most reprehensible violation of the contract created by the act of 1853.

The act of 1853 (section 9) expressly declares that the company may mortgage their property "in whole or in part, as they shall deem expedient." Nothing in the act of 1856, which is a general law, conflicts with or repeals this power. Their "property," as we have seen

284 from the adjudications, included their franchises. "The legislature having given a railway company the power to mortgage or pledge their property for the payment of loans, it was held that a deed executed under this power, assigning said company's road and all its effects, conveyed all the powers and franchises of the original corporation. (Allen vs. Mont. R. R. Co., 11 Ala., 437; Pollard vs. Maddox, 28 Ala., 321; Bardstown vs. Metcalf, 4 Met., (Kp.,) p. 200; and 30 Vermont, 182.)

What law or necessity prevents the division of the franchises? Suppose a railroad company had been incorporated beyond Brashear; was there any law or principle of law to prevent Mr. Morgan from contracting with that company to finish the road and divide with that company his franchise of exemption from taxation? If he had employed a company or an individual to complete the road, and it had been completed, would not the property have been exempted from taxation?

When the company, by their notarial act of 1859, mortgaged their franchises under the authority specially vested in them by the legislature, they meant to do something, and when the parties loaned their money on the bonds secured by a mortgage of the franchises, they

285 supposed something was meant. If the franchises could not be divided—if the franchise to run a road, or to exempt from taxation, was not mortgaged, what was? When Mr. Morgan bought franchises, named in the seizure by the marshal under order of a United States judge, and adjudicated to him by the marshal, what did he buy if not

these franchises? We have not insisted upon his having bought the right to be a corporation, because no such issue is presented in this case. Whether such a franchise can or cannot be sold is not a question before this court. The franchise of exemption from taxation is what is claimed, and that has been repeatedly sold, as we have already shown. In the case reported in 18 Wallace, p. 405, there were several sales, and the court said: "Subsequently the road and its appurtenances, and all franchises, which under the new constitution of Missouri, adopted in 1865, were transferable by the State, were sold by the commissioners to McKay, Vogel, and Simmons, who conveyed the same to Thomas Allen, who with others in July, 1867, became incorporated under the name of the St. Louis and Iron Mountain Railroad Company. That company is still in existence, and is one of the defendants herein. To it Allen
286 transferred all the rights and privileges acquired by him from his vendors and all they acquired from the State. The act under which the sale was made provided that the purchasers of the road should have all the rights, franchises, privileges, and immunities which were enjoyed by the defaulting company under its charter and laws amendatory thereof, subject to the limitations and conditions therein contained and not inconsistent with the act authorizing the sale. The new company thus acquired all the immunity from taxation which the original company had possessed, if it were competent for the legislature at the time, under the new constitution, to confer this privilege."

In the sale of 1870, the sheriff seized and sold all the remaining franchises belonging to the company. To this neither the company nor any member of it made any objection. No one in any way interested in that property is now before the court. Deed for it was given Charles Morgan, and he has been in undisputed possession since 1870. It is at least doubtful whether in this collateral way his title can be attacked.

We have shown that such franchises as immunity from taxa-
287 tion are property like any other property, and may be sold as such.

We have seen by the authorities last quoted that the pledge or mortgage of property of a railroad is a pledge of its franchises.

Why, then, cannot the franchises of the railroad, like other property, which is a pledge to all its creditors, (C. C., 3183, r. ed.,) be seized and sold on execution? Such have been the decisions of other States.

The supreme court of Pennsylvania, one of the ablest in the country, has so decided. "The franchises and property of a corporation may be seized and sold on a fiera facias." (Phil. and Balt. R. R. Co., appeal, 70 Penn. Sta., 355, 1870.)

That this franchise can be bought and sold with the railroad, like any other property, has also been decided by the supreme court of Minnesota. "Minnesota had authority to exempt the Minn. and Pacific Railroad Company's lands from taxation. When the State became purchaser of the property of that company under foreclosure, this right passed to the State, and when the State transferred the same property and franchises to the St. Paul and Pacific Railroad Company the same right of exemption was also transferred." (St. Paul R. R. Co. vs.
288 Porcher, 14 Minn., 297; Lacey's Dig., 753; see also 18th Wallace, p. 405.)

It will be borne in mind that in every step in the creation of the debt and the sale of the property of this road the word "franchises" is repeated. The statute authorizes the mortgage of the franchises; the resolutions of the company and the act of the notary mention franchises; the order of the court to sell, the seizure by the marshal and sheriff, the deeds of the marshal and the sheriff, all include the "franchises." Noth-

ing in this respect was left open for construction, and none of the interested parties have denied the validity of our title. And yet the majority of this honorable court says: "Our conclusion is that Chas. Morgan did not by the foreclosure of the mortgage on the first division of the road, with the rights and privileges applicable to it, acquire the privilege of exemption from taxation."

Third. The court say, if the exemption from taxation was conveyed to Charles Morgan by the franchise, "is he entitled to claim said exemption from taxation, in view of the fact that said railroad has not been completed within the limits of the State, although more than twenty years have elapsed since the charter was granted?"

In the decision this honorable court appear to rely more upon
289 this point than on the two that preceded it. The question is more one of fact than of law, and the *and the* evidence we had supposed uncontradicted as it stood was conclusively in our favor.

It will be borne in mind that no time is fixed in any act of the legislature within which the road was to be completed "within the limits of the State," and the exemption from taxation by section 2d of the act of 1853 is for ten years "after the completion of said road within the limits of the State." The legislators evidently believed that its interest would be a sufficient incentive to the company to induce them to complete the road within a reasonable time. They gave no subsidy to this road, and were not disposed to annex to this charter unreasonable conditions.

This honorable court says, "No time was fixed for the completion of the work, but the understanding doubtless was that it should be completed within the time usually occupied in accomplishing such enterprises." We have no evidence whatever on the subject of any undertaking in the premises. Had the legislature so intended it is presumed it would have so expressed itself. In cases where subsidies are
290 granted, such intention usually exists and is usually so expressed. The absence of the usual formula creates a presumption the reverse of that expressed by the court. But there is a more potent reason for a belief in the presumption for which we contend—that an early completion within the limits was not contemplated—and we earnestly pressed this point upon the court. It appears to have been overlooked. It is this: The charter of the company shows that the intention was not to build the road to the limits of the State for a long and indefinite period. The words of the preamble are that the incorporators form themselves into a company to build a railroad from Algiers, through Thibodeaux and Berwick's Bay, "thence to or near Washington, on the Courtableau, in the parish of St. Landry, the present proposed terminus, and hereafter to some point on the Sabine River, the boundary-line between Louisiana and Texas, that may be convenient and advantageous to the interests of both States, to be hereafter agreed upon, with the view to the extension of said road across the State of Texas to El Paso on the Rio Grande, and ultimately to the Pacific." And then the act says that ten years after the road is completed to the Sabine as a branch of this road to the Pacific, via El Paso, the exemption from taxes is to
291 cease. In view of this language declaring the purpose of the company to build only to Washington at present, and at some future period through the wilderness of Western Louisiana to the Sabine en route to the Pacific, can it be properly said that the understanding doubtless was that it should be completed within the limits of the State "within the time usually occupied in accomplishing such enterprises?" In view of the language above cited, showing that the company intended at the time of its incorporation to build only through the rich sugar-

lands of Louisiana, and at some remote period extend it to the Sabine, thence to the Pacific, it can hardly be asserted that the legislature intended an early completion of the road.

And the fact that the legislature to this date has omitted to take any action towards placing the company in default is a sufficient denial of any disappointment in the legislative department of the State. On the contrary, the legislature, by act No. 36, so late as February, 1872, expressly recognized and described the defendant as the owner of the New Orleans, Opelousas and Great Western Railroad, (sec. 2.) The State of
Louisiana, except in this suit in a collateral manner, has never
292 exacted the forfeiture of the franchises of the road, and no person interested in the stock of the company has ever denied the sale of all the property and franchises of the road to Mr. Morgan. In a suit for taxes a forfeiture of franchises is alleged, and a denial of transfer of property which is not contested by any interested party.

The decree of this honorable court declares a forfeiture of one of the franchises of the company. This cannot be done, we think, in a suit for taxes. Nothing, we think, is better settled than that neither the forfeiture, until judicially decreed, nor the cause can be inquired into, nor the existence of the corporation questioned collaterally in another suit. Hennen's Dig., p. 305; Atchafalaya Bank vs. Dawson, 13 La., 506; 15 La., 26; 5 Ann., 179; 9 Ann., 165; 20 Ann., 214.

Nor is the forfeiture of this franchise alleged in the pleading.

We now respectfully ask the attention of this honorable court to the evidence of intention to complete the road to the Sabine, as required by the charter, and of the work already done in that direction. The court will please to bear in mind that all the testimony stands uncontradicted. The witnesses were all gentlemen of irreproachable character, and the
State did not introduce a single witness to impeach them or the
293 facts to which they made affidavit.

It is asked what there is to prevent limited exemptions from taxation from becoming permanent ones by failure to complete roads. When human nature has so fallen that bad faith may be predicated as a rule on the mere existence of interest, there may be danger of such results. In cases of railroad companies the question can have no practical bearing. Railroads are built for legitimate business, not to defraud States of taxes. It is not to be presumed that, as a rule, railroads will be stopped short of their natural destination for no other purpose than to economise in taxes. Even if this case were one to be judged by interest only, it could never have been designed to stop the road at Brashear. Every mile built beyond that point pays doubly—freight and passengers on the extension—and the additional road becomes a "feeder" for that already built.

But we respectfully suggest that there is no necessity for inference in this case. The proofs of facts are before the court.

As this court states, the company was incorporated in 1853, and early in 1857 the first division to Berwick's Bay was completed, a distance of
eighty miles. In 1859 money was obtained on bonds and secured
294 by mortgage on the road, franchises, etc., and with this fund the company "almost completed the entire grading at Opelousas, a distance of 85 miles beyond Brashear, when in 1862 further operations were discontinued on said road on account of the war, the road having been seized by the military forces of the United States. When the road was restored to the company in 1866 it made every possible effort to complete the road, but without success." Thus this honorable court decides that there was no fault, no determination to abandon the idea

of completing the road prior to 1866, thus removing a period of thirteen years from the delay of twenty, of which it so earnestly complains. It only remains to us to show what has been done since 1866 to disprove any intention of abandonment, though, according to all principles of practice, the onus of the proof of abandonment is on the plaintiff, who relies on that point to deprive us of our franchise of exemption.

1st. All the witnesses prove that immediately after the purchase of the road by Mr. Morgan in 1869, he put it in complete order at an expense of over $2,000,000. He rebuilt bridges, renewed cross-ties, bought new rails, new engines, and new rolling-stock, indeed, he nearly
295 rebuilt the road to Brashear. At the close of the war this road was a ruin; it was as necessary to rebuild this road and stock it for business beyond Brashear as building the road itself west of Brashear. It was as much a step towards the completion to the Sabine as anything that could be done.

2d. In 1870 Mr. Morgan paid $250,000 for the road beyond Brashear. Could he have extended his road without buying this extension; or could he make any use of the right of way beyond Brashear without extending his road? Why should he pay a quarter of million of dollars for the sole purpose of owning?

3d. He organized a company to complete the road, with a capital of $4,000,000, and he subscribed $2,000,000. The time was unpropitious, our merchants could not take stock, and the company did not proceed.

4th. He bought squares of ground in New Orleans, built extensive depots, all with reference to a more extended business.

5th. He bought, for $250,000 cash, that part of the Ponchartrain Railroad on the levee, which connected his ferries and depots. All this was a necessary part of the road to the Sabine. It was the broad foundation for the magnificent structure he was about to erect. And
296 his agents all swear that these things were done with special reference to the completion of the road; and in absence of contradictory evidence, we are to take the facts as proved.

We see by the record, that in 1870 he asked the legislature to desist from subsidizing a rival road, and pledging himself, if his request was complied with, under penalty of $500,000, to complete his road within three years.

6th. Failing in this, Mr. Morgan took an important step toward the completion of the road, that cannot be misunderstood. He became the largest stockholder of the New Orleans, Mobile and Texas Railroad Company, (as stated by this court,) and he subscribed $1,258,000 of their stock, and transferred to their possession on condition that they construct and complete the road from Brashear City, northeasterly, to connect with their own main line, at or near Vermillionville, La., to Houston, Texas, which the act of the Louisiana legislature, No. 31, 1870, and the contract of the company with the State, required should be done prior to Nov. 7th, 1873. (See testimony of Mr. Hutchinson and of Mr. Whitney on this subject.)

This contract was made with the view to the early completion of his Texas road; it was made in December, 1871, and cost Mr. Morgan $1,258,000.

297 Mr. Bayley, the chief engineer of that company, says, "in the spring of 1872 work was resumed between Brashear and Vermillionville, under this agreement, and continued until August, 1872;" and he adds, "after the restoration of the road to the company in 1866, by the General Government, every possible effort was made to resume work and complete the road, but without success."

"In 1869, the road was sold to Charles Morgan, and he endeavored to form a company for its completion to Texas. This not succeeding, he subsequently offered to complete it with his own means exclusively, in a communication to the legislature of Louisiana, and within a specified time, on condition that the State would not aid or subsidize any opposition company. This offer, however, was not accepted, and the New Orleans, Mobile and Texas Railroad Company was subsidized.

"At the close of 1871, Mr. Morgan closed an agreement with the said New Orleans, Mobile and Texas Railroad Company, whereby he became a subscriber for the securities and stock of said company to the amount of $1,258,000, and said company agreed to complete the road to Vermillionville, and thence to Texas.

"Mr. Morgan, in July, 1872, changed the *guage* of his road and
298 rolling-stock from New Orleans to Brashear, in anticipation of the extension of the road from Brashear to Texas, as per his agreement with the New Orleans, Mobile and Texas Railroad Company.

"The road was regraded in part between Brashear and Vermillionville; about 50,000 cross-ties were delivered on same; some bridges were built; several "rights of way" were purchased, and arrangements were made to commence track-laying from Berwick's Bay.

"About $355,000 were expended between Brashear, Vermillionville, and Calcasieu River, of which not far from $80,000 to $100,000 were between Vermillionville and Brashear.

"During the past year Mr. Morgan has instituted suit, in consequence of the failure of the New Orleans, Mobile and Texas Railroad Company to comply with their agreement to complete the road from Brashear to Texas, to recover the unfinished road and franchises west, and this suit is now pending in the U. S. circuit court.

"New Orleans to Brashear (is) 80 miles; Brashear to Vermillionville, 63 miles; Vermillionville to Texas, via Lake Charles, 101 miles.

"I am informed, and believe from what I have seen and know, that Mr. Morgan has expended over $2,000,000 on his road branches
299 and on various improvements connected therewith."

Now, here are two items of, first, between $80,000 and $100,000; and, secondly, $355,000, expended under contract made by Mr. Morgan, towards the completion of the road to the Sabine.

But this is not all.

6th. In July, 1872, (Mr. Pandely tells us,) Mr. Morgan changed the *guage* of his railroad its whole length. This cost one hundred thousand dollars. Why was this done? To make the road east of Brashear correspond with the road then being graded west of Brashear. Not only the *guage* of the road was changed, but all the engines and stock had to be changed to correspond with the new *guage* of the road. Let us suppose that there was nothing proved but the expenditure of this $100,000, is it not enough in itself to disprove the intention to abandon the road? There could have been no other motive than to connect with the road then being graded west of Brashear. This, too, was as much an outlay for extension of the road as the laying of the track west of Brashear. It at once supplied the western branch with all the extensive railroad stock previously used on the branch east of Brashear. Omitting
300 the $2,000,000 expended in putting the road in running order, we

have the following sums spent in less than two years directly toward the completion of the road west of Brashear:

1. Changing *guage* of road $100,000
2. Purchase of road west of Brashear..... 250,000

3. Expended in grading the road west of Brashear in 1872, say	80,000
4. West of Vermillionville, by contract with N. O., Mobile and Texas R. R. Co	355,000
	$785,000

And we have the enormous sum of $785,600 expended directly with a view to completion of the road to the Sabine, either by Mr. Morgan or under his contract with another company of which he was the largest stockholder. Add to this $2,000,000 improvements on the road east of Brashear, and $1,285,000 for stock taken in the New Orleans, Mobile and Texas Railroad, with a view to the completion of a road to Texas, and we have a larger sum expended for the construction of a railroad than has ever been expended for a similar purpose by any one person in the Southern States. And yet a majority of this honorable court say "over ten years have passed and not a rod has been graded or a rail laid or a bridge built, or any work whatever done on the unfinished division of the road by the corporation or by Charles Morgan."

301 This honorable court asks by whose fault is it that, after a period of over twenty years, the road has not been half completed? We have seen that the court itself states that for thirteen of the twenty years it was nobody's fault; and we hope we have shown enough since it has been in the hands of Mr. Morgan to demonstrate that he has not been idle; and we have also shown that the legislature itself, without foreseeing the difficulties that environed the subject, never expected the road to be completed to the Sabine at an early period.

In our first brief we referred to the pages of the record on which we rely, and we printed most of the testimony. We have no time now to further advert to the evidence within the brief time allowed us by law for filing this petition; and to that fact also must be attributed the other faults of this brief. With the permission of the court, we hope to be permitted to add other authorities to those cited, and to elaborate what has been said.

It is said by part of the court that Mr. Morgan's application for a recognition of his right to a franchise, which, in good faith, he purchased and paid for, is made "with a bad grace." It is believed that he never asked in any court for more than justice, and he is pleased to say

302 he has generally obtained it. While he has always cheerfully paid heavy taxes in several States, he has conceived it to be a duty to himself and to the people to resist unconstitutional enactments, and, in the port-warden case of Louisiana, the ship-tax case of Alabama, and the inequitable quarantine laws of Texas, the United States Supreme Court has sustained him. He yet hopes that, on a closer examination of the law and facts in this case, this honorable court will not only decide that he has made no claim with a "bad grace," but that he is legally and equitably entitled to all that he has demanded.

It is better that the State should fail in collecting some of its claims than that its contracts should be violated and its plighted faith dishonored.

(Signed) LEOVY AND MONROE,
Attorneys for Petitioner.

Motion for delay to file additional petition and argument for rehearing.—Filed Jany. 24th, 1876.

Supreme court, Louisiana.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 5519.

On motion of Leovy and Monroe, of counsel for Charles Morgan,
303 defendant herein, and on stating that defendant desires a rehearing in this case, and wishes further time for elaboration of petition and argument for rehearing,

It is ordered that said Charles Morgan have 20 additional days for that purpose.

Order granting delay to file brief.

(Minutes)—Monday, Jany. 24th, 1876.

The court was duly opened pursuant to adjournment; present, their honors John T. Ludeling, chief-justice, James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 5519.

On motion of Leovy and Monroe, of counsel, it is ordered by the court that defendant be allowed a delay of twenty days to prepare and file a brief in support of the petition for a rehearing in this case.

Rehearing refused.

(Minutes)—Monday, Apl. 10, 1876.

The court was duly opened pursuant to adjournment; present, their honors John T. Ludeling, chief-justice, James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices. His honor the chief-justice pronounced the judgment and decree in
304 the following case:

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 5519.

It is ordered that the rehearing applied for in this case be refused.

Supreme court of the State of La.

Writ of error.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 5519.

Copy of a writ of error lodged in the clerk's office of the supreme court

of the State of Louisiana, in pursuance of the statute in such case made and provided, this 12th day of April, A. D. one thousand eight hundred and seventy-six.

(Signed) M. P. JULIAN, *Dy. Clk.*
(Signed) LEOVY AND MONROE,
Attorney of Plaintiff in Error.

Filed April 12th, 1876.
(Signed) M. P. JULIAN, *Dy. Clk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

305 Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between the State of Louisiana, plaintiff, and Charles Morgan, defendant, wherein was drawn in question the validity of a statute of, or an authority exercised under, the said State of Louisiana, on the ground of their being repugnant to the constitution, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said Charles Morgan, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may
306 cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Allowed:
(Signed) JNO. T. LUDELING,
Chief-Justice S. Court of La.

Supreme court of Louisiana.

Bond for writ of error.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 5519.

Filed April 12th, 1876.
(Signed) M. P. JULIAN,
Dy. Clerk.

Know all men by these presents that we, Charles Morgan, as principal, and George Jonas, as surety, are held and firmly bound unto the State of Louisiana, in the full sum of thirty thousand dollars, to be paid to the State of Louisiana, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated twelveth (12) day of April, in the year our Lord one thousand eight hundred and seventy six.

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Whereas, lately at a session of the supreme court Louisiana, in a suit depending in said supreme court, wherein the State of Louisiana was plaintiff, and Charles Morgan defendant, judgment was rendered against the said Charles Morgan, defendant, and the said Charles Morgan having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana, citing admonishing said State to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now the condition of the above obligation is such, that if the said Charles Morgan shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) CHAS. A. WHITNEY, [L. S.]
For CHAS. MORGAN.

308 (Signed) GEO. JONAS. [L. S.]

Sealed and delivered in the presence of—
(Signed) CH. JUMONVILLE.
" HENRY J. LEOVY.

Approved:
(Signed) JNO. T. LUDELING,
Chief-Justice S. Court of La.

Supreme court of Louisiana.

Petition for writ of error, etc.

STATE OF LOUISIANA
vs.
CHARLES MORGAN. } No. 5519.

Filed April 12th, 1876.
(Signed) M. P. JULIAN,
Dy. Clk.

To the honorable the chief justice and the supreme court of Louisiana:

The petition of Charles Morgan, a citizen of the State of New York, respectfully represents, that in the case of The State of Louisiana vs. Charles Morgan, (your petitioner,) being number 5519 of the docket of this honorable court, was involved the question of the constitutionality of a certain law of the State of Louisiana, on the ground that it violates the Constitution of the United States; that the decision of the Supreme Court of this State is that said law is constitutional and disallows the right of your petitioner, relied upon under said constitution; that

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said judgment is the final decree of the highest court of the State having jurisdiction of the controversy; that he desires to obtain and prosecute a writ of error from said judgment of the supreme court of Louisiana to the Supreme Court of the United States, to operate as a

supersedeas, on his giving such bond and security as the law requires, and which may be herein fixed; and that a citation in due form and according to law may issue in the premises.

Wherefore your petitioner respectfully prays that a writ of error be granted to him as aforesaid, returnable in the Supreme Court of the United States on the second Monday of October next, (or first day of next term of the United States Supreme Court,) on petitioner giving bond and security in such sum as his honor the chief-justice of this honorable court may fix, and that such writ of error may operate as a supersedeas, and that a citation may issue to the defendant in error, and that all other requirements of law in the premises may be complied with.

(Signed) LEOVY AND MONROE,
Attys. for Petitioner.

Order.

Let a writ of error from the judgment rendered by the supreme court in this case to the Supreme Court of the United States, to operate
310 as a supersedeas, be granted, on the petitioner, and plaintiff in error, giving bond, with good and sufficient security, in the sum of thirty thousand dollars, conditioned as the law directs, returnable in the Supreme court on the second Monday of October next, and the defendant in error be cited to answer said writ of error.

New Orleans, April 12th, 1876.

(Signed) JNO. T. LUDELING,
Chief-Justice S. Court of Louisiana.

311 *Clerk's certificate.*

Supreme court of the State of Louisiana.

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing three hundred and ten pages contain a full, true, and complete copy of the transcript of the proceedings had in the superior district court for the parish of Orleans, in a certain suit wherein the State of Louisiana is plaintiff and Charles Morgan is defendant, and also of all the proceedings had in this supreme court on the appeal taken by said defendant; which said transcript of appeal is now on the files of this honorable court under No. 5519.

In testimony whereof I have hereunto set my hand and affixed the seal of this hon. court at the city of New Orleans, this 26th day of June, A. D. 1876, and in the hundredth year of the Independence of the United States of America.

[SEAL.] JNO. M. HOWELL, *Clerk.*

312 *Certificate of the judge.*

Supreme court of the State of Louisiana.

I, John T. Ludeling, chief-justice of the supreme court of the State of Louisiana, do hereby certify that John Miller Howell is the clerk of the supreme court of the State of Louisana, holding sessions at the city of New Orleans; that the signature of John Miller Howell to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all his official acts.

In faith whereof I have hereunto set my hand and seal, at the city of New Orleans, this 26th day of June, A. D. 1876.

[SEAL.] JNO. T. LUDELING,
Chief-Justice S. Court of Louisiana.

313 THE UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

The President of the United States to William P. Kellogg, governor of the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Charles Morgan plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Charles Morgan, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] JNO. T. LUDELING,
Chief-Justice S. Court of La.

314 (Indorsed:) Supreme court of La. No. 5519. State of La. vs. Charles Morgan. Citation to Wm. P. Kellogg, govr. of the State of Louisiana, for return. Recd. Apr. 27, 1876, and on the 23d day of May, same year, I served a copy of within citation and accompanying petition on Wm. P. Kellogg, gov. of the State of La., in person.

Ret. same day.

Shff. fees, $2.00.

EUGENE MESTIER,
Dy. Shff.

Eugene Mestier, depy. shff., duly sworn, deposes that all the facts of his return are true & correct.

EUGENE MESTIER,
Dy. Shff

Sworn to & subscribed before me this 25th day of May, A. D. 1876.

M. P. JULIAN,
Dy. Clk.

315 THE UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

The President of the United States to Alexander P. Field, attorney-general of the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in

the clerk's office of the supreme court of the State of Louisiana at New Orleans, wherein Charles Morgan plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Charles Morgan, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] JNO. T. LUDELING,
Chief-Justice S. Court of La.

316 (Indorsed:) Supreme court of La. No. 5519. State of La. vs Charles Morgan. Citation on A. P. Field, atty. gen. of the State of La., for return.

Recd. Apr. 27, 1876, and on 29th day of same month & year I served the within citation on A. P. Field, atty. general of the State of Louisiana in person.

Retd. same day.

Shff. fees, $1.00.

S. E. CROZAT,
Dy. Shff.

S. E. Crozat, dy. sheriff, duly sworn, deposes and says that the allegations of his return are true & correct.

S. E. CROZAT,
Dy. Shff.

Sworn to and subscribed before me this 25th day of May, A. D. 1876.

M. P. JULIAN,
Dy. Clk.

317 THE UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

The President of the United States to Henry C. Dibble, assistant attorney-general of the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Charles Morgan is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Charles Morgan, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] JNO. T. LUDELING,
Chief-Justice S. Court of La.

318 (Indorsed:) Supreme court of La. No. 5519. State of La. vs. Charles Morgan. Citation to Henry C. Dibble, asst. atty. genl. of he State of Louisiana for return.

Recd. Apr. 27, 1876, and on the 29th day of same month & year I

served a copy of the within citation on H. C. Dibble, asst. atty. general of the State of Louisiana in person.

Retd. same day.

Shff. fees, $1.00.

S. E. CROZAT,
Dy. Shff.

S. E. Crozat, dy. shff., duly sworn, deposes and says that the allegations of his return are true.

S. E. CROZAT,
Dy. Shff.

Sworn to & subscribed before me this 25th day of May, A. D. 1876.

M. P. JULIAN,
Dy. Clk.

319 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Louisiana, plaintiff, and Charles Morgan, defendant, wherein was drawn in question the validity of a statute of, or an authority exercised under, the said State of Louisiana, on the ground of their being repugnant to the constitution, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said Charles Morgan, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Allowed.

JNO. T. LUDELING,
Chief-Justice S. Court of La.

(Indorsed:) Supreme court of the State of La. No. 5519. State of Louisiana versus Charles Morgan. Writ of error. Filed April 12th, 1876. M. P. Julian, dy. clk.

(Indorsement on cover:) No. 652. Charles Morgan, plaintiff in error, vs. The State of Louisiana. Louisiana sup. court. Filed 1st July, 1876.

Supreme Court

-OF THE-

UNITED STATES.

No. 352.

CHARLES MORGAN, Plaintiff in Error,

versus

STATE OF LOUISIANA.

HENRY J. LEOVY & F. A. MONROE,

Attorneys for Charles Morgan.

T. H. Thomason, Printer, 26 & 28 Bank Place.

Supreme Court of the United States.

No. 652.

CHARLES MORGAN, PLAINTIFF IN ERROR,

versus

STATE OF LOUISIANA.

This case presents the question of the right of the State of Louisiana to tax railroad property owned by plaintiff. The claim is for taxes of years 1870 and 1871—no tax had ever before been imposed on this property. It is contended that the property, having been exempted by a Statute of 1853, for a valuable consideration, it cannot now be taxed without impairing the obligation of the original contract contained in that Statute. Three of the Judges of the Supreme Court of Louisiana, differing among themselves as to their reasoning, decided the tax could be constitutionally imposed. The Chief Justice, with Mr Justice Morgan concurring, dissented from the conclusion of the majority. To the plaintiff in error this case is one of great importance, as it practically involves the power,

not only of the State, but of the parishes and municipal corporations to tax his railroad. In purchasing, he paid an enormous sum for the privilege of exemption from taxation, and believed he could safely rely on the good faith of the State, when it promised that this property should not be taxed.

The railroad runs to Morgan City, (formerly Brashear) a distance of eighty miles, from New Orleans. At Morgan City it connects with a line of steamers running thence to Galveston and other Texas ports. The road is now known as Morgan's Louisiana and Texas Railroad; formerly it was the New Orleans, Opelousas and Great Western Railroad.

The statute incorporating the New Orleans, Opelousas and Great Western Railroad Company was approved April 22d, 1853. Its immediate object was to build a railroad from Algiers, opposite New Orleans, through the sugar region, to Washington, La., and ultimately to extend it to the Sabine river, the western boundary of Louisiana, and thence, at a much more distant day, to the Pacific ocean.

In the preamble (Act No. 140, of 1853,) the corporators declare, that they form themselves into a company to build a railroad from Algiers, through Thibodeaux and Berwick's Bay, "thence to or near Washington, on the Courtableau, in the parish of St. Landry, *the present proposed terminus*, and *hereafter to some point* on the Sabine river, the boundary line between Louisiana and Texas, that may be convenient and advantageous to the interests of both States, to be hereafter

agreed upon, *with a view to the extension of said road across the State of Texas, to El Paso, on the Rio Grande, and ultimately to the Pacific.*"

Section 2, p. 120, of this act of 1853, is that which exempts the property of the road from taxation. It recites: "that the capital stock of said Company shall be exempt from taxation, and its works, fixtures, work shops, warehouses, vehicles of transportation and other appurtenances, shall be exempt from taxation for ten years after the completion of said road *within the limits of this State.*"

It will be observed that the capital stock is exempt from taxation without limitation; and the rest of the property for ten years after completion of the road—not to Washington, La., but to the Sabine, the western boundary of the State—a period then believed to be distant.

Section 9, of this act of 1853, authorizes the Company to borrow money, to issue bonds and, to secure the same, to mortgage the property of the Company, in whole or in part. It reads as follows: "the president and directors of the said New Orleans, Opelousas and Great Western Railroad Company, may borrow from time to time, such sums of money as may be required for the construction of the said road, over and above all amounts received from subscriptions to the capital stock; provided that the amounts borrowed do not exceed six millions of dollars; and said president and directors be, and are hereby authorized to secure said loans by *mortgaging the property of the company, in whole or in part,* as they

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shall deem expedient; and any mortgage so given, need not be re-inscribed to continue said mortgage in force."

This is all of the charter of the company that has any bearing on the points involved in the case.

Act No. 345, 1853, (p. 328,) extends the franchises of the company, so as to include New Orleans within their limits, and grants privileges for ferries, depots, etc. Act of 1855, No. 163, p. 212, repeals a restraining proviso of the act No. 345, of 1853.

Act No. 194, approved March 20, 1856, "to extend the powers of Railroad Companies," declares—

"That in addition to the powers conferred by law upon railroad companies, *any* railroad company established under the laws of this State, may borrow from time to time, such sums of money, as may be required for the construction or repairs of any railroad, and for this purpose, may issue bonds or their obligations, secured by mortgage *upon the franchises and all the property* of said companies, and payable at such time and places, as the President and Directors may designate, with power to sell, pledge or otherwise dispose of said bonds, on such terms as the said President and Directors may deem expedient."

The above are the statutes applicable to the case, the following are the facts :

First. The said railroad company, being thus empowered, and having built their road to Brashear, eighty miles westward, resolved on the 17th of March, 1859, in order to obtain means to further construct

their road, to issue two thousand bonds of one thousand dollars each, and to secure the payment of the same, it was further resolved to mortgage the completed division of the road, "together with the lands over which said road is constructed, the equipments, appurtenances, *rights and franchises*, etc."

Second. By virtue of this resolution, and the statute of 1853, p. 121, (sec. 9,) and of 1856, (No. 194,) a notarial act was passed in due form, April 1st, 1859, before Magner, notary public, by which the bonds were issued, and the road, privileges and *franchises*, were duly mortgaged.

Third. The bonds were negotiated ; the money was used to extend the work, and the war ensued. The road was seized by U. S. troops and kept in their possession till February, 1866. The company afterwards failed to pay the coupons of the bonds; suit was instituted by the bond holders in the U. S. Circuit Court, in the year 1869, and the property was ordered to be sold.

Fourth. On the fifth of April, 1869, Charles Morgan bought, at the Marshal's sale, for $2,050,000, the road, "the buildings, wharves and all equipments and *franchises*" belonging to this division of the road. This purchase included all the road that was built—it extended from New Orleans to Brashear, a distance of about eighty miles.

Fifth. The proceeds of this sale did not pay the whole debt. Suit was instituted by various bond holders in the Fourth and Seventh State District Courts,

in the parish of Orleans ; judgment was obtained and the graded road beyond Brashear, and *all* other property owned by the New Orleans, Opelousas and Great Western Railroad Company, including its rights, franchises, and privileges, were purchased 2d March, 1870, by Charles Morgan, at sheriff's sale in the parish of Orleans, for $250,000. These facts, we believe, are all undisputed.

In every step, in all these proceedings, the *privileges and franchises* of the road were expressly mentioned, and formed, in the eyes of the capitalist, a very valuable portion of the property mortgaged and sold.

We contend—First. That the Louisiana Legislature had power to exempt from taxation all the property of the railroad company ; and, having made the grant for a consideration, that they are without power to revoke it.

Second. That the grant of exemption from taxation to a railroad company is a franchise ; that, like other property it may be mortgaged and sold; especially in Louisiana, where the statutes expressly authorize the mortgage and sale of all railroad franchises.

Third. That plaintiff in error is the owner by purchase at public sale, judicially ordered, of the franchise of exemption from taxation, and that by no act or omission of his or of his vendors or other party has that franchise been forfeited or impaired.

First. The Legislature of Louisiana had the power to exempt the property of the railroad company from taxation, and having made the grant for a con-

sideration they are without power to revoke it. This statement involves two propositions; but as they have been generally considered together in most of the decisions of this Honorable Court, we have united them in order to prevent repetition.

The question of the power of a State Legislature to grant exemptions from taxation has been frequently adjudicated by this Honorable Court, and lately declared to be no longer open for discussion. In the case of New Jersey vs. Wilson, 7th Cranch, p. 165, this Honorable Court say, that a legislative act declaring that certain lands, purchased for the Indians, should not be taxed, bound subsequent Legislatures. In Jefferson Branch Bank vs. Shelly, 1 Black, p. 536, the Court refers to the New Jersey case against Wilson, and add, "in respect to the power of a State Legislature to exempt persons, corporations and things from taxation, and to bind *the State by such enactment*, we refer to the case of New Jersey vs. Wilson."

In the more recent case of the Home of the Friendless vs. Rouse, 8th Wallace, p. 437, the Court say:

"The validity of this contract is questioned at the bar on the ground that the Legislature has no authority to grant away the power of taxation. The answer to this position is that the question is *no longer open for argument here*, for it is settled by the repeated adjudications of this court, that a State may, by contract, based on a consideration, exempt the property of an individual or corporation from taxation either for a specified period or permanently."

And this is again asserted by this Honorable Court, in language quite as emphatic, in 13 Wallace, p. 265, (Wilmington Railroad vs. Reid); also in 13 Wallace, p. 269, (Raleigh Railroad vs. Reid).

The case, however, of Humphrey vs. Pegues, reported in 16 Wallace, p. 244, disposes finally of this question. The Court was unanimous, and decided as follows: "another question is raised, to-wit: that a Legislature does not possess the power to grant to a corporation a perpetual immunity from taxation. It is said that the power of taxation is among the highest powers of a sovereign State; that its exercise is a political necessity—without which the State must cease to exist; and that it is not competent for one Legislature, by binding its successors, to compass the death of the State. It is too late to raise this question in this Court. It has been held that such a provision in the Charter of an incorporation constitutes a contract which the State may not subsequently impair. These doctrines have been reiterated and reaffirmed so recently as the year 1871, in an opinion delivered by Mr. Justice Davis, in the case of the Wilmington Railroad vs. Reid. They must be considered as settled in this Court."

It is not contended that when the La. Act of 1853 was passed, there was anything in the State Constitution of 1852 which prohibited it. On the contrary, Art. 123 of the Constitution, and the Louisiana Supreme Court construction of the meaning of that article, expressly permit it. See State vs. Poydras, 9 Annual Reports,

p. 165; New Orleans vs. Commercial Bank, 10 Annual Reports, p. 735.

And the second proposition of this statement is equally true; that the Legislature having made the grant cannot revoke it.

As early as the year 1810, in the great case of Fletcher vs. Peck, (6 Cranch, 87,) the Supreme Court of the United States decided that a grant, made in pursuance of a contract, is an executed contract and its obligation cannot be impaired by a law of a State—and also that contracts made by a State are protected by the Constitution of the United States—in that clause which prohibits States from passing laws impairing the obligation of contracts.

In the case of New Jersey vs Wilson, 7th Cranch, 165. (already referred to) it was decided by this Honorable Court, that a legislative act, declaring that thereafter certain lands, which should be purchased for the Indians should not be taxed, constituted a contract, which could not be rescinded by a subsequent legislative act, without violation of the United States Constitution. In that case the Court say: "This is certainly a contract clothed in forms of unusual solemnity. The privilege, though for the benefit of the Indians, is annexed, by the terms which create it, to the land itself, not to their persons. It is for their advantage that it should be annexed to the land, because in the event of a sale, on which alone the question could become material, the value would be enhanced by it." "The land has been sold,

with the assent of the State, with all its privileges and immunities. The purchaser succeeds with the assent of the State to all the rights of the Indians. He stands, with respect to this land, in their place, and claims the benefit of their contract. This contract is certainly impaired by a law which would annul this essential part of it."

In the case of Jefferson Branch Bank vs. Shelly, 1st Black, 536, the Court approve all that we have quoted from the case of New Jersey vs. Wilson, and add, "It has been decided *three* times by this Court that the 60th section of the charter of the State Bank of Ohio, was a *contract* between the State and the Bank within the meaning, and entitled to the protection of the Constitution and of the United States, against any law of the State of Ohio impairing its obligation," and the Court decide that the acts passed by the State to tax, etc., "were and are unconstitutional and void."

In the case of the Home of the Friendless vs. Rouse, 8th Wallace, p. 437, the Court say :

"There is no necessity of looking for the consideration of a legislative contract outside of the objects for which the corporation was created. These objects were deemed by the legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it. This has been the well-settled doctrine on this subject, of this court, since the case of Dartmouth College vs. Woodward.

"It is true that legislative contracts are to be con-

strued most favorably to the State, if on a fair consideration to be given to the charter any reasonable doubt arise as to their proper interpretation; but, as every contract is to be construed to accomplish the intention of the parties to it, if there is no ambiguity, and this intention clearly appears on reading the instrument, it is as much the duty of the court to uphold and sustain it as if it were a contract between private persons. Testing the contract in question by these rules, there does not seem to be any rational doubt about its true meaning. 'All property of said corporation shall be exempt from taxation,' are the words used in the act of incorporation, and there is no need of supplying any words to ascertain the legislative intention. To add the word 'forever,' after the word taxation, could not make the meaning any clearer. It was undoubtedly the purpose of the legislature to grant to the corporation a valuable franchise, *and it is easy to see that the franchise would be comparatively of little value if the legislature without taking direct action on the subject, could, at its will, resume the power of taxation.*"

The more recent case, however, of Wilmington Railroad vs. Reid, 13 Wallace, p. 265, bears, if possible, more decidedly on the precise point. The charter of the road was granted in 1853, (the same year as that in which the grant was made to the New Orleans, Opelousas and Great Western Railroad Company) and exempted the property of the road from taxation. Under a subsequent law, a tax was imposed; the lan-

guage of the Court, unanimously decided, is very emphatic—

"The General Assembly of North Carolina told the Wilmington and Weldon Railroad Company, in language, which no one can misunderstand, that if they would complete the work of internal improvement for which they were incorporated their property and the shares of their stockholders should be forever exempt from taxation. This is not denied, but it is contended that *subsequent legislation does not impair the obligation of the contract*, and this presents the only question in the case. The taxes imposed are upon the franchise and rolling stock of the company, and upon lots of land appurtenant to and forming part of the property of the company, and necessary to be used in the successful operation of its business. It certainly requires no argument to show that a railroad corporation cannot perform the functions for which it was created without owning rolling stock, and a limited quantity of real estate, and that these are embraced in the general term property."

"Nothing is better settled than, that the franchise of a private corporation, which in its application to a railroad is the privilege of running it and taking fare and freight—is property and of the most valuable kind, as it cannot be taken for public use, even without compensation."

And in the case of the Raleigh and Western Railroad Company vs. Reid, 13 Wallace, p. 269, the Court reaffirms all that had been previously said and

adds, "it was the manifest object of the legislature which incorporated this company to invite the investment of capital in the enterprise of building this road; *and no means better adapted for this purpose could have been devised, short of total immunity from taxation.*"

And to the above, we beg to add the following:

"The act to incorporate the Illinois Central R. R. Co., which declares certain exemptions of the property of the company from taxation, is a contract between the State and the company, which cannot be changed or annulled without the consent of both parties." Lacey's Digest of Railway Decisions, p. 853; Neustadt vs. Illinois Central R. R., 31 Ill. 484; Illinois Central R. R. Co. vs. McLean County, 17 Ill. 291.

See also 16 Wallace, 244; 18 Wallace 392; 20 Wallace, 36; 21 Wallace, 492.

In closing this branch of our subject, we ask the attention of this Honorable Court to the language of the Supreme Court of Virginia, in construing a contract similar to that under which defendant claims exemption: "it is true," said the Court, "that exemptions from taxation are to be construed strictly; but where the power has been once conferred, it is not to be crippled or destroyed by strained interpretations of subsequent laws." Lacey's Digest, 752; Orange R. R. Co. vs. Alexandria; 18 Grattan (Va.) Reports, p. 176.

Indeed, no direct attempt on the part of the legislature to revoke this grant is alleged. It is contended that the general statute imposing taxation on *all* property has that effect.

Second. The grant of exemption from taxation to a railroad company is a franchise; that like other property, may be mortgaged and sold, especially in Louisiana, whose statutes expressly authorize the mortgage and sale of railroad franchises; upon this proposition the Judges of the Supreme Court of Louisiana were divided.

Bouvier defines a franchise to be "a certain *privilege* conferred by grant from the government," etc., and Worcester says, it is a "certain *privilege* or *exemption*, bestowed by grant from the government, and vested in individuals; *immunity*." In the decisions of this Honorable Court, exemption from taxation, is invariably designated as either a "franchise" or "privilege."

Like the question just discussed, these points have been frequently decided by this Honorable Court.

In the case of New Jersey vs. Wilson, 7 Cranch, 165, already referred to, this Court say, in reference to the act exempting the lands of the Indians from taxation:

"This is certainly a contract clothed in forms of unusual solemnity. The privilege, though for the benefit of the Indians, is annexed, by the terms which create it, *to the land itself, not to their persons.* It is for their advantage that it should be annexed to the land, *because in the event of a sale*, on which alone the question could become material, *the value would be enchanced by it.*" "The land has been sold, with the assent of the State, with all its privileges and immunities. The purchaser succeeds with the assent of the State, *to all*

the rights of the Indians. He stands with respect to this land, in their place, and claims the benefit of their contract. This contract is certainly impaired by a law which would annul the essential part of it."

And in the case reported in 1st Black, 556, (Jefferson Bank vs. Shelly,) the Court, referring to the above case say, approvingly, " this Court then said, the privilege, though for the benefit of the Indians, *is annexed, by the terms which create it, to the land itself, and not to their persons.*"

In the case of the Home of the Friendless vs. Rouse, 8th Wallace 437, the Court, describe exemption from taxation as a most valuable *franchise :*

" 'All property of said corporation shall be exempt from taxation,' are the words used in the act of incorporation, and there is no need of supplying any words to ascertain the legislative intention. To add the word 'forever,' after the word taxation, could not make the meaning any clearer. It was undoubtedly the purpose of the legislature to grant to the corporation a valuable *franchise*, and it is easy to see that the *franchise* would be comparatively of little value if the legislature, without taking direct action on the subject, could, at its will, resume the power of taxation."

In Trask vs. Maguire, 18 Wallace, 392, exemption from taxation is treated throughout as a "franchise," and it was therein decided, that it could be sold under executory process like any other property.

In Humphrey vs. Pegues, 16 Wallace, 244, it is said that all the privileges "as well as powers and rights of

the prior company were granted to the latter. A more important or more comprehensive privilege than a perpetual immunity from taxation can scarcely be imagined. It contains the essential idea of a peculiar benefit or advantage of a special exemption from a burden falling upon others." "We are not advised what other powers and privileges were then and there conferred upon it in addition to the exemption we are considering. But this exemption was conferred; an exemption that must have been understood by the least reflecting person as being of *immense value to all concerned in the road.*"

And in the case of 13 Wallace, p. 269, the Supreme Court declare, that "it was the manifest object of the Legislature which incorporated the Company to invite the investment of capital in the enterprise of building this road; and no means better adapted for this purpose *could have been devised, short of total immunity from taxation.*"

If exemption from taxation be a franchise like other franchises, as we have shown, then it would seem to follow that it could be mortgaged to secure loans, and sold to pay debts like other franchises; this, however, in this case, has been *doubted.*

In other States, where no special power is given to railroad companies to borrow money for building their roads and to mortgage the same to secure the loan, it has been frequently decided that the power existed as "one of the implied means, necessary and proper, to carry into effect their specific powers."

But in Louisiana the power has been given in unmistakable and unequivocal language in section 9 of the statute of 1853, (p. 121) and the act of 1856, (No. 194.)

Section 9 declares, that "the president and directors of the said New Orleans, Opelousas and Great Western Railroad Company, may borrow from time to time, such sums of money as may be required for the construction of the said road, over and above all amounts received from subscriptions to the capital stock; provided that the amounts borrowed do not exceed six millions of dollars; and said president and directors be, and are hereby authorized to secure said loans by *mortgaging* the property of the company, *in whole or in part*, as they shall deem expedient; and any mortgage so given, need not be re-inscribed to continue said mortgage in force."

Restricting our present inquiry to this ninth section of the Act of 1853, authorizing the Company to mortgage its "property" in whole or in part, the question arises, does the word "property" cover the franchises? Some of the Judges of the La. Supreme Court thought it did not. It would seem that if the Legislature had designed to except the franchises it would have made the exception. We contend that under the word "property" the Legislature intended that the franchises should be included. There was no valid reason why they should not extend to the vendees, under a mortgage sale, the same encouragement that was offered to the original stockholders.

This Honorable Court have decided the very point

in question. It decided that the word "property" included the *franchise* of a railroad company. We refer to the case of Wilmington R. R. Co. vs. Reid, 13 Wallace, p. 265. In that case an act of the North Carolina Legislature exempted *the property* of the Wilmington Railroad Company from taxation—a later act imposed a tax on the *franchise* of the Company—the Court say, "*nothing is better settled* than that the franchise of a private corporation, which in its application to a railroad is the privilege of running it; and taking fare and freight *is property, and of the most valuable kind,*" etc.

This Honorable Court, in all the decisions on immunity from taxation, have given to the contracts a liberal and comprehensive construction. In the case of the Pacific R. R. Co. vs. Maguire, decided in October, 1873, (20 Wallace, 36) it is said, "the statute of 1852 provided for an exemption from taxation of the Pacific Railroad, its bed, and of its buildings, machinery, engines, cars and other property. The tax imposed by the ordinance of 1865, was an assessed tax of ten per cent. of all their gross receipts for the transportation of freight and passengers. It was directed to be levied and collected from the Pacific Railroad. In the Wilmington Railroad vs. Reid, it was held that a statute exempting all the *property* of a railroad company from taxation, exempts not only the rolling stock and all estate owned by it, and required by the company for the successful prosecution of its business, but its *franchise* also. * * * We cannot doubt that a contract not to tax a *railroad company* or

its property, is *broken* by the levy of a tax upon its gross receipts for the transportation of freight and passengers."

This case, in other respects, has a direct bearing on that now before this Court. By the act organizing the company it was stipulated, that the Pacific road should not be taxed until two years after it was finished. The act was passed in 1852. In 1865 the tax was imposed. The court, after stating the facts, say: "The authorities which have been referred to, show that a State Legislature may make a contract to exempt a corporation from taxation by which it will be bound. That the facts recited constitute such an agreement we think sufficiently plain. The Pacific corporation was unable to raise funds for completing its road. To induce it to go on with its work, and to induce individuals and counties to subscribe for what the Legislature evidently believed an enterprise of public benefit, it made use of the credit of the State from time to time. To make the franchise still more valuable to the company, and to the end that individuals and counties should be induced to subscribe to the stock, the Legislature added an exemption from taxation until the road should *be comp'eted and in operation.*" "This transaction amounted to a contract between the State and the corporation, *that there should be no taxation of the company until the occurrence of the stipulated events.*"

In the case reported in 4 Metcalf, Ky. Reports, p. 199, the charter of the Bardstown Railroad Company authorized the company to borrow money to build

their road, but gave them no special power to mortgage. The point was as to their power to mortgage, etc., the Court of Appeal say: "Assuming, as we must do, that the loan was necessary to complete the road, and assuming it to be probable, as we may do, that the loan could not have been effected without a mortgage, considerations of general convenience seem to be on the side of the power to mortgage, rather than against it. The public had an interest in seeing the road constructed. But whether it shall be thus operated by A or B, by an individual or a corporation, does not seem to be a matter of any interest whatever to the public. Under the charter of the appellants, its road, while held by it, is under the control of its stockholders. A single person, by purchasing all the stock, can control the road as completely as if he owned it individually. A purchaser under its mortgage would take the road subject to the terms of the charter designed to protect the public, and would be bound thereby as fully as the corporation is. Our decision rests upon the ground that the appellant, having been authorized to borrow the money, had implied power *to create a mortgage* to secure its payment."

But the remainder of the decision is more direct as to the present point: "it is contended that the mortgage of the 'railroad with all its *rights and privileges*' was not authorized by the resolution of the directors, which authorized a mortgage of the 'road and its *property*,' etc. * * * Moreover, as the object was to secure the mortgage debt, and as the road *could be of*

little or no value without the right to use it as a railroad, our opinion is that the directors, in authorizing a *mortgage of its road and its property*, must have designed a transfer of the rights to operate the road." We thus see that under the head of "property" was included at least one valuable franchise.

The above decision was rendered in a case where the State did not authorize the railroad company to mortgage its property. The following digest of decisions shows that the power to mortgage its "property" carries with it the power to mortgage and sell the *franchises*.

The Legislature having given a railway company power to mortgage or pledge their *property* for the payment of loans, it was held that a deed executed under this power, assigning said company's road and all its effects, *conveyed all the powers and franchises of the original corporation.*" Allen vs. Mont. R. R. Co., 11 Ala., 437; Pollard vs. Maddox, 28 Ala., 321. Bardstown vs. Metcalf, 4 Met. (Ky.) p. 200, and 30 Vermont, 182.

The Supreme Court of Pennsylvania have decided that the franchises of a railroad may be seized and sold on a fieri facias. 70 Penn. 355, (1870.)

The following decision is in point: "Minnesota had authority to exempt the Minnesota and Pacific Railroad Company lands from taxation. When the State became purchaser of the *property* of that company under foreclosure, this right passed to the State, and when the State transferred the same property and

franchises to the St. Paul and Pacific Railroad Company, *the same right of exemption was also transferred.*" Lacey's Dig., 753; St. Paul Railroad Company vs. Porcher, 14 Minn., 297.

In Grinnell vs. Trustees of Sandusky Road, it was held in Ohio, by the Court of Common Pleas, "That a railroad company, authorized to borrow money for the construction of its road, has, *as an incident to that power, and without an express grant* in its charter, the power to secure such loan by mortgage," and that "the mortgage of the road and its income is in effect a mortgage *also of the franchises of the company*, and upon the sale of the road under the mortgage, *the franchise will pass to the purchasers.*" (See Redfield on Railways, p. 477.)

"So, too, a corporation, created to construct a railway, has the power to borrow money, as one of the implied means necessary and proper to carry into effect its specific powers." Union Bank vs. Jacobs, 6 Humph. 515.

In Enfield Toll Bridge vs. Hart. etc., (17 Conn., p. 40,) Williams, Chief Justice, in giving judgment, says, "What are the rights of the plaintiff? They are derived from the grant of the Legislature, and are, what in law, is known as a franchise, and a franchise is an incorporeal hereditament, known as a species of property, as well as any estate in lands. *It is property which may be bought and sold*, which will descend to heirs and may be devised. Its value is greater or less, according to the privilege granted to the pro-

prietors;" and Judge Redfield, in his work on Railways, adds, "This is but the repetition of the elementary definitions of a franchise, found in the earliest text writers of the English Common law."

We thus see that even under Section 9 of the Act of 1853, (p. 121), (and perhaps without it,) the New Orleans, Opelousas and Great Western Railroad Company had ample power to mortgage "in whole or in part," and sell their franchises.

The only exception to the power to mortgage and sell franchises that seems to have been made in a few cases, was as to the right to sell the franchise *to be a corporation:* but even as to that franchise, the later cases admit the power. This has no practical bearing in the present case, because the only franchise included in the discussion is the ownership of the right of exemption from taxation; besides the Act of 1856 (No. 194) expressly authorizes all companies to mortgage their franchises, and makes no exceptions whatever. The importance attached, in some of the earlier cases, to the value of the franchise "to be a corporation" no longer exists. In Louisiana, and many other States, any six or more persons may "form themselves into and constitute a corporation, for the following purposes, to-wit: for the construction, working and maintenance of *railroads,*" (Revised Statutes of 1869, p. 134, originally enacted in 1848, and amended in 1853). So this franchise, the only one about which doubts existed, is held very cheaply in Louisiana, while as to the much more valuable one

of immunity from taxation, *no court, so far as we can find*, have ever held that it could not be mortgaged or sold like other property, especially where a statute gives the right to mortgage and sell *all* franchises. On the other hand, we have shown that the highest court in this country, has repeatedly decided that immunity from taxation could be sold with other property of railroads, and when the word "property" was used it included the franchise of exemption from taxation.

It will be observed that section 9 of the Act of 1853 authorized the Company to mortgage this property *in whole or in part*.

But if any doubt exists as to the power in the New Orleans, Opelousas and Great Western Railroad Company to mortgage their franchises, under the ninth section of the Act of 1853, that doubt must cease as to the Act of 1856, (No. 194). That Act, in express terms, and as if to remove all possibility of cavil on this subject, expressly authorizes *all* railroad companies to mortgage their *franchises* and all property to secure payment of money borrowed to construct or repair railroads, "that in addition to the powers conferred by law upon railroad companies, any railroad company established under the laws of this State, may borrow from time to time, such sums of money, as may be required for the construction or repairs of any railroad, and for this purpose, may issue bonds or their obligations, secured by mortgage *upon the franchises and all the property* of said companies, and payable at such time and places, as the president and

directors may designate, with power to sell, pledge or otherwise dispose of said bonds, on such terms as the said president and directors may deem expedient." Prior to the passage of this Act the New Orleans, Opelousas and Great Western Railroad Company were authorized to mortgage all their property. This act extends that power to all railroad companies.

Surely in view of these Statutes and the decisions we have cited, the question will not again be asked (as was done in this case by some of the state Supreme Court Judges,) "Was the exemption from taxation, stated in the second section of the charter of the Company, transferable?"

Third. The plaintiff in error is the owner by purchase at public sale, judicially ordered, of the franchise of exemption from taxation, and his right to this franchise has neither been forfeited nor impaired.

As it is not denied that Mr. Morgan acquired title by purchase at Marshal and Sheriff's sale, it is unnecessary to refer to the evidence on this subject. The first point that is now presented for consideration is the extent of the privilege. There can be no doubt that an important distinction is made in the grant between the capital stock, and the works, etc., of the Company. The words of the act are: "the capital stock of the Company shall be exempt from taxation, and its works, fixtures, work-shops, warehouses, vehicles of transportation and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of the State,"

the individual stockholders. The language of the amendatory act did not qualify this meaning; that only declared that other property of the company should also be deemed capital stock, and the additional provision that it should be vested in the respective shareholders, according to their respective shares, only meant that they should have the interest of shareholders in the property, according to their respective shares."

In 13 Wallace, 264, (Wilmington vs. Reid,) the Court said that the statute exempting all the "*property*" of a railroad company from taxation, exempted not only the rolling stock and real estate owned by it and required by the Company for the successful promotion of its business, but its franchise also. And in the Pacific Road vs. Maguire, 20 Wallace, p. 42, the Court decided that the words, the "*Pacific Railroad*" shall be exempt from taxation, covered the gross receipts of the road. In this last case, as we have seen, the Act of 1852 exempted the road until after its completion. The Court, twenty-one years after the passage of the act, say, we are of opinion :—

"1st. That the twelfth section of the Act of 1852 created a contract between the State and the railroad company, by which the railroad was exempt from taxation until it was completed and put in operation, and until it should declare a dividend on its capital stock, not, however, exceeding longer than two years after its completion."

"2d. That the ordinance of 1865, imposing a tax of ten per cent. upon the gross earnings before the road was completed and in operation, and had declared a dividend, was a violation of this contract, and that the levy for its enforcement was illegal."

In the act under which we claim exemption, the words are, "That the capital stock of the Company shall be exempt from taxation, and its works, fixtures, work-shops, warehouses, vehicles of transportation and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of the State." (Section 2, Act 1853, p. 120). It is impossible to select words that could more unequivocally cover *all the property* belonging to a railroad company than these words in this law, and the case is almost identical with that cited.

The second clause of section 2 of this Act of 1853, requires special attention. It will be observed that the works, fixtures, etc., are to be declared to be exempt from taxation until ten years "after the completion of said road *within the limits of this State;*" that is to say, until years after its completion to the Sabine river. The preamble of the charter (Act of 1853, No. 149,) declares the road shall be built to Berwick's Bay, "thence to or near *Washington*, on the Courtableau, in the parish of St. Landry, *the present proposed terminus*, and *hereafter* to some point on the Sabine river, the boundary line between Louisiana and Texas, that may be convenient and advantageous to the interests of both States, to be hereafter agreed

upon, *with a view to the extension of said road across the State of Texas, to El Paso, on the Rio Grande,* and *ultimately to the Pacific.*"

Now had the exemption from taxation been limited to ten years after the completion of the road to Washington, it might have been contended with some propriety that the Legislature did not intend to grant exemption for a very long period; but they fixed the distant Sabine as the point where taxation was to begin and use language which indicates their belief that the road to the Sabine could not be finished within many years. We invite attention to this distinction in response to that portion of the reasoning of the State Court which insists that it was "the understanding" of the Legislature that the road should be completed to the Sabine river at an early day—and that the failure to complete this road to the Sabine involved a forfeiture of the franchises.

There is nothing in the charter of the Company or in any act of the Louisiana Legislature, to show that the completion of the road within a given time was to be a *condition* upon which the exemption of taxation was to depend. There is nothing which states when the work shall begin, nothing in regard to its time of completion to Washington, La., nothing as to when the work shall be renewed beyond Washington. The Legislature believed the interest of the stockholders would govern these matters. They granted the immunity of exemption from taxation without putting a limit as to time; simply, that while the road should re-

main incomplete, or completed only to Washington, its proposed terminus, no tax should be imposed; but *should* the road be completed to the Sabine (the limits of the State), then, and in that case, ten years thereafter, (when it was presumed it would be a powerful and successful corporation,) taxes should be paid.

The State Court objects that if the road is never completed it never would be taxed. But would there be anything very unusual or very extraordinary in such a grant? It will be remembered that the Legislature did not give this Company one dollar of subsidy; did not give it an acre of land. Was it then too much, to exempt it from taxation, while the road remained in an incomplete condition? Nothing has been more common than a grant of perpetual exemption from taxation on railroads. In the following cases, decided in this Honorable Court, the exemption was *forever*. 13 Wallace, 264, 269; 16 Wallace, 244, and 18 Wallace, 392.

We do not, as we have said, find anywhere anything in the charter of the New Orleans, Opelousas and Great Western Railroad Company that makes it incumbent on them to commence the road, or to build it, or to finish it. The State gave them the right to build, and added that, until ten years after it is finished to the Sabine, it will not be taxed. In a somewhat similar case the Court of Appeals of Kentucky, (4 Metcalf, 207,) said: "The doctrine, according to Judge Redfield, rests upon the ground that the corporation is *under an obligation* to the State to build and operate

its road. Such was *formerly* the rule in England, even as to a railway corporation, that had not made an express undertaking to that effect, and to which no exclusive privileges had been granted. (Redfield on Railways, Sec. 152.) But concerning that class of cases, the doctrine seems to have been overruled in England, and has *never prevailed* in America, (ibid, Sec. 192 and notes.) The appellant did not expressly undertake to build the road authorized by its Charter; nor did its Charter expressly declare that it should do so, nor was any exclusive right to do so conferred upon it. In our opinion *the appellant was not bound to commence the road, nor to complete it after commencing it, nor to put it in operation after completion, nor to continue it in operation.* It might have forfeited its Charter by *non user*, but was not bound to use it."

We think, then, that the Legislature of Louisiana designed to give the New Orleans, Opelousas and Great Western Railroad Company the right to build a road, and to exempt it from taxation for ten years after its completion to the Sabine, but did not intend to annex any conditions whatever to this grant.

It must be borne in mind that the Legislature of Louisiana has never complained of the non-completion of this road. Neither Mr. Morgan nor the Company have ever been placed in default. No attempt has been made by the Legislature to forfeit the franchises of the Company; no suggestion in that direction or complaint has ever been made. On the contrary, the State Legislature, by Act No. 36, so late as February,

1872, expressly recognize and describe Charles Morgan as the owner of the New Orleans, Opelousas and Great Western Railroad, and grant him additional privileges.

The present suit is based upon a strained construction, on the part of the Attorney General, of the general statutes for providing a revenue for the State. In a simple suit for taxes, *without even an allegation in the pleadings* referring to the franchises, an effort is made to cancel a judicial sale and to forfeit valuable privileges.

In Louisiana, the Supreme Court have often decided, that "neither the forfeiture, until judicially decreed, nor the cause can be inquired into, nor the existence of the corporation questioned collaterally in another suit." Hennen's La. Dig., p. 305; Atchafalaya Bank vs. Dawson, 13 La., 506; 15 La., 26; 5 La. Ann., 179; 9 La. Ann., 165; 20 La. Ann 214.

On this subject, in this case, the Chief Justice declares, "no step has yet been taken to forfeit the grant; and, *in my opinion, it cannot be done in this suit.*"

Besides, this is an attempt to so construe a general law as to make it repeal one, granting special privileges. This, the Supreme Court of Louisiana has often declared, cannot be done. Rogers vs. Beiler, 3 Martin, 672; DeArmas Case, 10 Martin,172; State vs. Kilty, 12 Ann. 805; Bank of La. vs. Tonat, 1 Ann. 54; Pontchartrain Co. vs. Lafayette Co., 10 Ann. 741; St. Martin vs. New Orleans, 14 Ann. 113, New Orleans

vs. Poydras Asylum, 9 Ann. 584; 5 Ann. 394; 10 Ann. 762.

"Prior, will not be repealed by subsequent laws, from the mere fact that the latter differ from the former. A repeal will be implied only where the last statute contains provisions contrary to, or irreconcilable with, those of prior laws. *A repeal by implication is not favored in law.*" Hennen's La. Digest, p. 788.

The evidence, showing recent and extensive work on the road, both by the Railroad Company and Mr. Morgan, is too conclusive to require comment or explanation. The Company was incorporated in 1853—by 1858 a first class road eighty miles long was completed through the then swamps and cypress forests of Louisiana, to Brashear. In spite of the disastrous war which followed, grading, clearing and other expensive work was done to Opelousas, eighty-five miles beyond Brashear. Indeed, we are relieved from the necessity of referring to what was done prior to 1866 (when the road was returned to the Company by the Federal authorities, who had held it during the war) for the State Supreme Court say, early in 1857 the first division to Berwick's Bay was completed—a distance of eighty miles. In 1859 money was obtained on bonds and secured by mortgage on the road, franchises, etc., and with this fund the Company "almost completed the entire grading to Opelousas, a distance of 85 miles beyond Brashear, when in 1862 further operations were discontinued on said road on account of the war, the road having been seized by the military forces of

the United States. When the road was restored to the Company in 1866 *it made every possible effort to complete the road, but without success.*" Thus that Court decide that there was no fault, no determination to abandon the idea of completing the road prior to 1866—a period of thirteen years of the delay of twenty, of which it complained. What was done by the Company since 1866 and by Mr. Morgan since his purchase is told by *all* the witnesses. The State introduced none to contradict them. Mr. G. W. R. Bayley, formerly Chief Engineer of the New Orleans, Opelousas and Great Western Railroad Company, states the facts briefly, as follows:

"Railroad to Brashear (was) completed early in 1857, at which time I was chief engineer of the company.

"Construction thence *was continued from time to time, until about the close of* 1862 *or early in* 1863; at which time the clearing and grading was nearly completed to Opelousas, eighty-five miles beyond Brashear.

"At the breaking out of the war arrangements had been made for constructing the road from the town of Opelousas to the Sabine river—98 miles—but the capture of New Orleans prevented further progress.

"After the restoration of the road to the company in 1866 by the general Government, *every possible effort was made to resume work and complete the road;* but without success.

"In 1869, the road was sold to Charles Morgan, and he endeavored to form a company *for its completion to Texas.* This not succeeding, he subsequently offered

to complete it with his own means exclusively, in a communication to the Legislature of Louisiana, and within a specified time, on condition that the State would not aid or subsidize any opposition company. This offer, however, was not accepted, and the New Orleans, Mobile and Texas Railroad Company was subsidized.

"At the close of 1871, Mr. Morgan closed an agreement with the said New Orleans, Mobile and Texas Railroad Company, whereby he became a subscriber for the securities and stock of said company to the amount of $1,258,000, and said company agreed to complete the road to Vermillionville, and thence to Texas.

"In the spring of 1872, work *was resumed* between Brashear and Vermillionville under this agreement, and this continued until August, 1872.

"Mr. Morgan, in July, 1872, changed the gauge of his road and rolling stock from New Orleans to Brashear, *in anticipation of the extension of the road from Brashear to Texas*, as per his agreement with the New Orleans, Mobile and Texas Railroad Company.

"The road was re-graded in part between Brashear and Vermillionville; about 50,000 cross-ties were delivered on same; some bridges were built, several 'rights of way' were purchased, and arrangements were made to commence track-laying from Berwick's Bay.

"*About* $355,000 *were expended between Brashear, Vermillionville and Calcasieu river, of which, not far from*

$80,000 to $100,000 *were between Vermillionville and Brashear.*

"During the past year Mr. Morgan has instituted suit, in consequence of the failure of the New Orleans, Mobile and Texas Railroad Company to comply with their agreement to complete the road from Brashear to Texas, to recover the unfinished road and franchises west, and this suit is now pending in the U. S. Circuit Court.

"New Orleans to Brashear (is) 80 miles; Brashear to Vermillionville, 63 miles; Vermillionville to Texas, via Lake Charles, 101 miles.

"I am informed, and believe from what I have seen and know, that Mr Morgan has expended over $2,000,000 on his road, branches and on various improvements connected therewith."

And Mr. Pandely (Superintendent of Morgan's road) tells us in answer to question as to cost of changing gauge of the road east of Brashear to correspond with that being built west:

"A. I would have to look over the accounts. I can give a rough statement—somewhere between a hundred and ten and a hundred and forty thousand dollars.

"Q. What was the gauge changed for? What was the motive?

"A. It was changed from five feet six inches, to four feet eight and a half. Mr. Morgan had agreed with the New Orleans, Mobile and Texas Railroad, that they should start from his terminus at Brashear City,

and we would meet them there. Their gauge was four feet eight, and he made his to conform to it.

"Q. It was to meet that portion of the road beyond Brashear City ?

"A. *Yes—there was no other purpose.*"

And to this must be added two hundred and fifty thousand dollars paid by Mr. Morgan as the purchase price of the road west of Brashear, which it is shown was bought, in 1870, to enable him to extend the road west from Brashear, and which could have been bought for no other purpose.

About all these facts there is no dispute ; and, yet, in the face of them, some of the Judges of the State Supreme Court declare that they see no evidence to indicate an intention to go on with the work.

We think we have shown good faith in every particular on the part of Charles Morgan. We have seen a compliance on his part with all the obligations of his contract. We have seen, that he paid a very large price for the franchises he purchased, and relied on the good faith of the State of Louisiana; that the Legislature has in no manner directed or authorized this suit; that the Attorney General seeks under a general law, providing for collection of taxes, to deprive plaintiff of his property and to impair the obligation of a solemn contract made by the State. Under these circumstances, we invoke the appropriate language of Chief Justice Marshal, delivered in the case of Rutherford vs. Greene. (2 Wheaton, 196) :

"Whatever the legislative power may be, its acts

ought never to be so construed as to subvert the rights of property, unless its intention, so to do, shall be expressed in such terms as to admit of no doubt, and to show a clear design to effect the object. No general terms, intended for property to which they may be fairly applicable, and not particularly applied by the Legislature, *no silent, implied and constructive repeals* ought ever to be so understood *as to divest a vested right.*"

Respectfully Submitted,

HENRY J. LEOVY and
F. A. MONROE,
Attorneys for Chas. Morgan.

We append opinion of Chief Justice Ludeling, and also map of Morgan's Louisiana and Texas Railroad.

DISSENTING OPINION OF CHIEF JUSTICE LUDELING.

STATE OF LOUISIANA,
vs.
CHARLES MORGAN,
No. 5519.

This suit is to collect taxes, alleged to be due by the defendant on account of his Louisiana and Texas Railroad. The defendant claims that the capital stock and all property attached to the railway is exempt from taxation. The New Orleans, Opelousas and Great Western Railroad Company was chartered, by act of the Legislature, in April, 1853. The second section of the charter declares, "that the capital stock of said company shall be exempt from taxation, and its works, fixtures, workshops, warehouses, vehicles of transportation and other *appurtenances*, shall be exempt from taxation for ten years after the completion of said road within the limits of this State." And act No. 194 of the General Assembly of 1856, provides, "that in *addition* to the powers conferred by law upon railroad companies, any railroad company established under the laws of this State, may borrow from time to time, such sums of money as may be required for the construction or repairs of any railroad, and for this purpose, may issue bonds or their obligations, secured by mortgage upon *the franchises*, and all the property of said company," etc. Act of 1853, p. 205.

Section 9 of the charter of the company also author-

zed the company to borrow money or bonds, and "to secure said bonds by mortgaging the property of the company, *in whole or in part*, as they shall deem proper." Acts of 1853, p. 121. Under these statutes the company executed two thousand bonds of $1000 each, and secured their payment by mortgaging the completed grand division of the road, extending from New Orleans to Brashear, including depots, lands, equipments, franchises, etc. After the war this mortgage was foreclosed, and Charles Morgan bought the railroad with its franchises, from New Orleans to Brashear; that is, the property covered by the mortgage. Subsequently, he purchased the other portions of the road to the State line, which was partially graded, with the *franchises*, etc. Thus he became the owner of the entire road with all the rights and franchises of the original company.

I am at a loss to imagine why the property is not exempt from taxation. The Legislature had unquestionably the power to exempt the property from taxation, and did *exempt* it, and it authorized the franchises to be mortgaged and sold. Morgan acquired, at public sale, all the property and franchises of the company. Is not the exemption from taxation a *franchise* property? At this day, this is not an open question in this country. 7 Cranch, 165; 1 Black, 536; 8 Wall., 437; 13 Wall., 264, 269; 16 Wall., 244; 18 Wall., 392; 20 Wall., 36; 21 Wall., 492; 11 Ala., 437; 28 Ala., 321; 4 Met., 200; 30 Vermont, 182; 70 Penn., 355; 17 Conn., 40; Redfield on Railways, 477, 480.

By the textual provisions of the Code, not only corporeal objects may be sold, "but also *incorporeal things*, such as a debt, an inheritance, a servitude or *any other rights.*" Civil Code, Article 2449.

Franchises, therefore, are incorporeal hereditaments, known as a species of property, as well as any estate in lands. Bouvier says, "a franchise is a certain privilege conferred by grant from the government." Worcester defines it to be "a certain privilege or exemption bestowed by grant from the government and vested in individuals; immunity."

Has the franchise been forfeited? I think not. There is no limit to the grant, except that it should cease to exist, after *ten years after the completion* of the road to the State line. The road is not yet completed. It is said, however, that the defendant is not trying to complete the road. Be that as it may, no step has as yet been taken to forfeit the grant, and in my opinion, it cannot be done in this suit.

I therefore dissent from the opinion of the majority of my associate Justices.

Rendered May 22d, 1876.

Mr. Justice Morgan concurred in the conclusion of the Chief Justice.

U. S. Supreme Court.

OCTOBER TERM, 1876.

CHARLES MORGAN, Plaintiff in Error,
vs.
THE STATE OF LOUISIANA.
No. 652.

Additional **BRIEF OF PLAINTIFF.**

Statement of the Case.

State claims from Charles Morgan $15,458.50, &c., also $2,900; for taxes for 1870 and 1871 on part of the railroad; but the question really involved in this case is the right of State, parishes, and municipal corporations to tax the *whole* road. The case therefore is one of great importance. It involves a sum of possibly $40,000 per annum. The company, whose property Mr. Morgan bought, was incorporated in 1853, and the attempt has never before been made to tax the property.

1. State of Louisiana, by statute of 1853, section 2d, exempted from taxation, capital of New Orleans, Opelousas and Great Western Railroad Company for an indefinite period, and exempted for ten years after completion of the road within the *limits of the State*, the work-shops, warehouses, etc.

Record, p. 72.

2. Ninth section of act of 1853 (Record, p. 72) authorizes the company to borrow money for construction of road, and "to secure said loans by mortgaging the property of the company *in whole or in part.*"

3. Act 1854 (Record, p. 75) authorizes *all* railroad companies, to secure payment of their obligations for construction of their roads, "mortgage their said road, *in whole or in part*," etc.

4. Act 1856 (Record, p. 76) gives power to *all* railroad companies to borrow money for construction of the roads, and for this purpose to "issue bonds on their obligations, secured by mortgages upon the *franchises* and *all* the property of said companies."

5. By the civil code of Louisiana, not only corporeal objects may be sold, but also "incorporeal things, such as a debt, an inheritance, a servitude, or *any other right.* (C. C., 2449.) And in Louisiana, by Article 3183, Civil Code, *all* the property of a debtor is a *pledge* to the creditor.

6. Under these statutes the said company issued bonds (1st April, 1859) for $2,000,000, secured by mortgage on *all* the property *and franchises* of the completed road—that is, from New Orleans to Brashear—a distance of eighty miles. A portion of the road beyond was graded only.

Record, p. 32.

7. Interest on the bonds not having been paid for many years, suit was instituted (February, 1869) in U. S. Circuit Court for Louisiana, and that court ordered sale of the road, *franchises*, etc., from New Orleans to Brashear City. (Record, pp. 79–81.) The marshal seized the road *and franchises*, and advertised the same for sale, (Record, pp. 82, 83,) and the marshal sold all the road *and franchises* to Charles Morgan (plaintiff in error) for $2,050,000.

Record, p. 35.

8. Proceeds of sale did not pay whole debt due on the bonds. Suits were instituted in State courts, judgments obtained, and the road beyond Brashear, (partly graded,) including "the *franchises* of the New Orleans, Opelousas and Great Western Railroad Company *granted by the State of Louisiana* to said company, *and* giving it the right, as set forth in its charter and act of corporation, to construct," etc., a railroad was sold at sheriff's sale to Charles Morgan, April 22, 1870, for $250,000 cash, (Record, p. 20;) thus Mr. Morgan became the sole owner of the whole road and all its franchises.

9. Acts of 1868, p. 247, 1869, p. 146, 1870, p. 126, are revenue acts imposing the taxes, and relied on, in argument, by the State. They repeal all former laws in conflict with them.

We contend, as stated in our answers:

1. That the 2d section of act of 1853 (Record, p. 72) exempting the road from taxation, and under authority of which the road was built, constituted a valid and subsisting *contract* between the State of Louisiana and the railroad company, and that it cannot be impaired or affected by any *legislation* of the State or by *any authority exercised by or under the State*, and "that all statutes of the State, and especially that under which the State claims in this suit, so far as they affect this defendant, or attempt to set aside or annul the said act, approved April 22, 1853, * * * and which act was a contract between the State and the company, are null and void, * * because they violate several provisions of the Constitution of the United States, and among others the first clause of Section 10 of the 1st Article, which prohibits any State from passing any law impairing the obligation of contracts."

Record, pp. 2, 6, 9, etc.

A majority of the State Supreme Court (three out of five)

decided in favor of the validity of the State laws imposing the tax, and rendered judgment against plaintiff in error for said taxes. We contend there is error in said decree in declaring the validity of the statutes which deprived us of a valid right acquired under contract made with the State.

Law Points.

First—

The Louisiana Legislature had power to exempt the property from taxation, and the grant made in this case was a contract which was inviolable.

New Jersey *vs.* Wilson, 7 Cranch, 165.
Jefferson Bank *vs.* Shelly, 1 Black, 536.
Home of the Friendless *vs.* Rouse, 8 Wall., 437.
Wilmington Road *vs.* Rich, 13 Wall., 265; also 13 Wall., 269.
Humphrey *vs.* Pegues, 16 Wall., 244; also 16 Wall., 244, 18 Wall., 392, 20 Wall., 36, 21 Wall., 492.
Lacey's Digest of Railway Decisions, p. 853.
31 Ill. R., 484, 17 Ill., 291.

Second—

Exemption from taxation is a franchise that may be mortgaged and sold, especially in Louisiana.

Louisiana Statutes of 1853, section 9, (Record, p. 67,) of 1854, (Record, p. 75;) of 1856, (Record, p. 76,) Civil Code, art. 2449, 3183.
New Jersey *vs.* Wilson, 7 Cranch, 165.
Jefferson Bank *vs.* Shelly, 1 Black, 536.
Home of Friendless, 8 Wall., 437.
Trask *vs.* Maguire, 18 Wall., 392.
Pacific Railroad *vs.* Maguire, 20 Wall., 36.
Humphrey *vs.* Pegues, 16 Wall., 244; also 13 Wall., 269.
Wilmington Railroad *vs.* Reid, 13 Wall., 265.

Bardstown *vs.* ———, 4 Ky., Metcalf's Report, p. 199.
Allen *vs.* Mont. R. R. Co., 11 Ala., 437.
Pollard *vs.* Maddox, 28 Ala., 321 ; 30 Vermont, p. 182. 70 Penn., 355, (1870.)
St. Paul Co. *vs.* Parker, 14 Minn., 297.
Lacey's Dig. R. R. Decisions, 753.
Union Bank case, 6 Humph., 515.
Enfield *vs.* Hart, 17 Conn., p. 40.

The only instance in which doubt is expressed as to power to sell franchises is in that of the franchise to be a corporation; but that question is not presented here, and, besides, the Louisiana Statutes referred to, authorize the mortgage and sale of *all* franchises, *in whole or in part.*

Third—

Plaintiff in error is owner by purchase at public sale of all the property formerly owned by the Railroad Company, including all its franchises, and his ownership of the same has in no manner been forfeited.

It was contended by some of the judges that even if plaintiff acquired the ownership of the franchise of exemption he has forfeited it by non-completion of the road.

1. The *capital stock* of the company is exempted *forever* there is no limitation or qualification as to that, nor was it contended there was. *It is admitted* in the brief for the State, p. 5:

The limitation relates only to "works, fixtures, workshops, ware-houses, vehicles of transportation, and other appurtenances."

Sec. 2, act 1853, Record, p. 72.

2. The exemption, as to "works, fixtures," etc., for ten years after completion of the road, within the limits of the State, is not a *condition* requiring the road to be finished within any given time; it means, so long as the road

is unfinished, and its business limited, it shall not pay taxes. No subsidies were given to this road. The road was to be built to Washington, Louisiana, and at a *distant period* to the outside limits of the State.

See preamble to act 1853, Record, p. 67.
See original brief, p. 30 and p. 10.

3. The State offered no witness to prove abandonment of intention of Morgan to complete the road, while testimony of Bayley, 65 and 49; of Pandely, 49; of Whitney, 20 and 43; of Hutchinson, 12, show conclusively the expenditure by Mr. Morgan of several hundred thousands of dollars, directed exclusively to extension of road beyond Brashear. The testimony, which is of the most conclusive character, is wholly uncontradicted.

Special Points.

1. The exemption from taxation of the capital stock of the company is without limitation; but that part invested in works, fixtures, work-shops, etc., is exempt till ten years after completion of the road, etc. (Section 2, act 1853.) It is admitted the capital stock is exempt forever. The "capital stock" is the capital of the company, whether remaining in money or invested in the necessary real estate, rails and track, and the grading and laying rails.

See Trask *v.* Maguire, 18 Wall., 391.
Wilmington *v.* Reid, 13 Wall., p. 264
Pacific Road *v.* Maguire, 20 Wall., p. 42.
Original brief, p. 27.

The tax claimed in this case is for $400,000, real estate, (part of the road) $300,000, capital, and $19,000, ferry-boats; in all $719,000. Now all this is clearly part of the capital stock exempted from taxation.

2. Some of the State judges say that franchises cannot be sold without consent of the State. This, as we have seen, with, *perhaps*, the single exception of the

franchise *to be a corporation*, has never before been so decided. But suppose the consent of the State was necessary, was not that assent given, when the State, in the three Acts referred to, (1853, 1854, 1856,) authorized the company to mortgage their property and franchises, in whole or in part, to secure the loan of moneys; surely, it cannot be contended the State assented to the mortgage and objected to the sale.

3. Counsel for the State, in his brief, says the acts of 1868, 1869, and 1870, under which taxes are claimed, are only re-enactments of former laws. We are at a loss to see what bearing this statement has on the case. The statutes were passed in the usual manner; repealed conflicting clauses of previous statutes; changed rate of taxation, etc. They were new statutes in every sense of the word; but, whether new or old, can, in no manner, affect the issues in this case.

4. It is attempted to forfeit the franchises purchased by Mr. Morgan. The Chief Justice of the Louisiana Supreme Court (in which Judge Morgan concurred) decided, very properly, that, even if legal grounds existed, that could not be done in this suit. The Legislature has taken no steps to declare these franchises forfeited. No direct attempt has been made by the Legislature to tax this property. It originated with assessors and tax collectors, who have commissions for collecting. Even since the institution of this suit the Louisiana Legislature expressly recognizes Mr. Morgan as the owner of the road and franchises, and gives him additional privileges. (Act No. 36 of 1872.)

The Chief Justice of Louisiana says: "no step has yet been taken to forfeit the grant, and in my opinion *it cannot be done in this suit.*"

See also Hennens' La. Dig., p. 305; 13 La., 506; 5 La. Ann., 179; 9 La. Ann., 165; 20 La. Ann., 214.

5. Besides this is an attempt to so construe a general law as to make it repeal one granting special privileges. This cannot be done in Louisiana.

See authorities, p. 33, of original brief.

6. Counsel for State say no Federal question has been raised in this case. This assertion is a little singular in view of the fact that we allege in our answers that the act of 1853, exempting road from taxation, was a contract; that acts of 1868, 1869, and 1870, so far as it is attempted to construe them or other acts as imposing a tax on us, impairs the obligation of a contract; that section 10 of article 1 of United States Constitution prohibits this; that therefore the statutes relied on are invalid; and that the Supreme Court of the State declared in favor of the validity of these statutes. It is precisely the question decided in all the railroad cases to which we have referred, and which were brought to this court on precisely the same issues.

7. The State contends that franchises cannot be divided. But Mr. Morgan is the owner of the whole road; his arrangement with the New Orleans, Mobile and Texas Railroad Company was *on condition* that they finished the road beyond Brashear.

The franchises could be divided, especially in Louisiana, as the acts of 1853, (section 9, Rec., p. 73,) and the act of 1854, (Record, p. 75,) expressly authorized the Company to mortgage all the property of the road, *in whole or in part*, and the Company did mortgage the road and franchises of the first grand division (to Brashear,) (Rec. p. 32,) and the *property now taxed is within the first division.*

See, also, act 1856, Record, 76.

8. It is contended that the tax exemption franchise on the road beyond Brashear was not legally sold, because it could not be sold without consent of the State. The authorities we have cited show the contrary, (except one or two authorities as to the right to be a corporation,) but the property taxed in this case is in the first division and not included in that beyond Brashear. Besides, in Louisiana, all rights may be sold for debt.

Civil Code, act 2,449.

See authorities in original brief, p. 21.

The State contends (in their brief, p. 7,) that the road from New Orleans to Brashear, eighty miles, is a complete road of itself. If so, and its franchises were *mortgaged* and sold to Mr. Morgan, why does he not own the franchise of exemption from taxation as to that part of the road?

CONCLUSION.

This is an attempt, on the part of State officers, without the sanction of any legislative act, to annul a statute passed and acted upon in good faith, the consequence of which would be to divest an innocent purchaser of valuable property for which a large price was paid. The emphatic language of C. J. Marshall, (2 Wheaton, 196,) quoted in our first brief, is directly in point.

HENRY J. LEOVY,
Attorney for Plaintiff in Error.

U. S. Supreme Court.

OCTOBER TERM, 1876.

CHARLES MORGAN, Plaintiff in Error,
vs.
THE STATE OF LOUISIANA.
No. 652.

BRIEF OF DEFENDANT IN ERROR.

Statement of the Case.

I. The Legislature of Louisiana, in 1853, in its charter of the "New Orleans, Opelousas and Great Western Railroad Company," declared:

"That the capital stock of said company shall be exempt from taxation, and its works, fixtures, work-shops, warehouses, vehicles of transportation and other appurtenances, shall be exempt from taxation for ten years after the completion of said road within the limits of this State."

Acts of Louisiana, 1853, No. 149, p. 120, Sec. 2.

II. Under a provision in its charter, or by virtue of subsequent legislation, the railroad company, on April 1, 1859, in order to secure the payment of certain bonds, issued by it, mortgaged (act 149 of 1853, Sec. 9, and act 194 of 1856) "the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwicks Bay, now [then] in full operation, constructed by the

said company in pursuance of their charter, and being the distance of eighty miles, together with the roadbeds of the main track and branches, and also all the depots and lands specially appertaining to them; all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road herein mortgaged and referred to, and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, right of way and effects generally, of every nature and description whatsoever, in use upon the division of the said railroad, or in anywise attached or appertaining to the same, without any exception or reservation, as well as all such as shall, or may hereafter, at any time be placed upon or attached to the said division of the said railroad, whether for the purpose of replacing others removed therefrom, or from any other cause whatsoever."

Record, pp. 32 to 34, (33.)

III. On May 25, 1869, the United States Marshal, under "executory process," in foreclosure of this mortgage, adjudicated at public sale to Charles Morgan (the plaintiff in error) for $2,050,000, the entire and identical property covered by the mortgage, and as particularly recited in the act of mortgage, title to which was given him by the marshal July 31, 1869, he, Morgan, having complied with the conditions of the adjudication.

Record, pp. 34 to 43.

IV. Several judgments on ordinary debts having been obtained in the State courts against the railroad company, the sheriff of the parish of Orleans seized under execution in those suits, and on March 22, 1870, adjudicated also to Charles Morgan:—

"*First.* The franchises * * * to construct, maintain, and run and operate a railroad from said terminus at Brashear or Berwicks Bay, to or near Washington on the Courtableau, in the parish of St. Landry, and thence to some point on the

Sabine river, the boundary line between Louisiana and Texas.

"*Second.* The rights of way, and the lands for depots, stations, and for the erection of buildings and works necessary for the use of a railroad, etc.

"*Third.* Thirty-six squares of ground situate in the town of Brooklyn, near Gretna, as also other parcels of ground within the parish of Orleans, etc."

Record, pp. 20 to 31.

V. The railroad has not been completed, nor is it materially advanced towards completion further than it was in 1859, before the mortgage was created, with the exception of some grading done between Berwicks Bay and Washington many years since; that is, the railroad extends to Berwicks Bay and no farther.

Record, *passim*.

VI. In 1869 and subsequent years, that is, since the purchases of Charles Morgan, this railroad property was listed for taxation by the State assessors for the parish of Orleans, under the general revenue laws of the State, so far as the same is situated in that parish, as the property of Charles Morgan, subject to taxation, and he, refusing to pay the tax, levied on said listing, was sued for the amount of the tax.

Record, p. 4.

VII. The defenses set up to the suit, necessary to be considered in this controversy, were that the property was exempt from taxation, by virtue of the provisions of the second section of the act of 1853, hereinbefore quoted, and "that all the statutes of the State, and specially that under which plaintiff claims to collect taxes in this suit, * * * are null and void, * * * because they violate the first clause of Section 10, of Article 1st of the Constitution of the United States."

See Answers, Record, pp. 3, 8, and 9 to 11.

The court, of the first instance, held the defense to be untenable, and gave judgment in favor of the State.

Record, p. 86.

On appeal, the supreme court of Louisiana, for reasons in the Record, affirmed the judgment.

Record, pp. 90 to 97.

The plaintiff in error asks that this judgment be reviewed by this court, under the authority conferred upon it by section 10, article 1 of the Constitution of the United States, namely, that "No State shall * * * pass any * * * law impairing the obligation of contracts."

Record, pp. 111 and 112.

The questions for solution are:

First. Is there a Federal question involved in this case; set up in the pleadings and actually decided?

Second. If so, was the decision of the State court erroneous?

The Argument.

I. *Has there been a Federal question raised and decided in this case?*

The plaintiff in error, defendant in the State courts, sets up as a defense to a suit for taxes, that the property sought to be made liable for the tax was exempt from taxation by virtue of the second section of act 149 of 1853 of the Legislature of Louisiana. p. 120.

After consideration of the testimony taken in support of this defense, the State court interpreted the State statute as not affording the exemption contended for. The State statute exempting the property of the New Orleans, Opelousas, and Great Western Railroad Company for ten years after the completion of its road within the limits of the State was set up by the plaintiff in error, and had been enacted *prior* to the organization of the railroad company, whose property

plaintiff in error is the purchaser; in fact was the charter of the corporation. The provisions of law, so far as the description of property subject to taxation is concerned, have been the same for many years, even long prior to the charter to the railroad company in 1853. Every few years this revenue law has been re-enacted, but with no changes particularly affecting the property in controversy. A comparison of the revenue laws, and especially those of 1848, 1852, 1855, and of 1868, 1869, and 1870, shows this. These are all simple re-enactments, with certain changes as to the machinery of assessment, collection, &c., and can hardly constitute such a new enactment as will bring the same within the constitutional prohibition.

No Federal question has therefore been raised *or* decided.

The Victory, 6 Wall., 382.
Hamilton Co. *vs.* Massachusetts, 6 Wall., 632.
Gibson *vs.* Choteau, 8 Wall., 314.
Steines *vs.* Franklin Co., 14 Wall., 15.
Insurance Co. *vs.* The Treasurer, 11 Wall., 204.
Murdock *vs.* City of Memphis, 20 Wall., 590.

"Where a party claims below, wholly in virtue of the law of a State, and the highest court of the State decides that under those laws the claimant has no case, no writ of error lies."

Worthy *vs.* The Commissioners, 9 Wall., 611.
The New York Life Insurance Co. *vs.* Herndon, October Term, 1875, No. 213.

II. *Was the decision of the State courts erroneous?*

The *capital stock* of the railroad company was forever exempt. It does not therefore appear in this controversy. It is valueless. The plaintiff in error *owns the property* of the company. The question is, *is that property*, in the hands of Charles Morgan, a third party, exempt from taxation under the exemption clause in favor of the railroad company of the econd section of act 149 of 1853?

The property of the *railroad company* was to "be exempt from taxation for ten years after the completion of said road within the limits of the State."

Does this exemption extend to the purchaser of the property, and after the possibility of the completion of the railroad within the limits of the State by the railroad company has forever ceased.

The plaintiff in error purchased, in 1869, the eighty miles of completed railroad, namely, that subject to mortgage. Suppose the railroad company, still holding its corporate franchise and its shareholders their certificates of stock, and capable of maintaining a corporate existence, had gone on and completed the remainder of the contemplated road, would the exemption clause have extended beyond the property then owned by the railroad company? There would then have been *two* railroads; one, Morgan's Texas railroad, extending from New Orleans to Berwicks Bay, the other that of the New Orleans, Opelousas and Great Western Railroad Company, extending from Berwicks Bay to Texas. Would the exemption from taxation in such a case have extended to the property of Mr. Charles Morgan, (to his railroad,) although purchased from the company?

If such could be the case, would not it be for the interest of Mr Morgan to prevent the completion of the contemplated railroad, and thereby secure the perpetual exemption of his property from taxation?

On the supposition, then, that Mr. Morgan purchased the franchises of the railroad company at the marshal's sale, as far as they could be included in the first grand division of eighty miles, yet it is respectfully submitted that the property purchased by him at the marshal's sale in May, 1869, is not exempt from taxation, the property thus purchased and owned by him having been an entire thing complete for more than ten years prior to his purchase.

III. But the purchase by the plaintiff in error at the sheriff's sale, in March, 1870, of the remaining property of

the railroad company, did not and could not include the franchises of the company.

Only by virtue of an express authorization of the legislature can the franchises of a corporation be divested. This was not the case at the sheriff's sale, made in the execution of an ordinary judgment on an ordinary debt against the railroad company.

1 Red. on Railways, chap. 7, p. 117, ed. 1873.
2 Red. on Railways, chap. 7, pp. 484, 501, ed. 1873.
Lacey Dig. Railway Decisions, p. 292, Nos. 4, 7, 21, 25.

See also—

Plymouth Railroad *v.* Colwell, 39 Penn. st., 337.
State *v.* Rivers, 5 Iredell.
Benedict *v.* Heineberg, 43 Vt., 231.
State *v.* Mexican Gulf Railroad Company, 3 Rob., (La.) 513.

The plaintiff in error could not acquire at the sheriff's sale any franchise of the railroad company, only its tangible property. He therefore did not acquire at the sheriff's sale the right of exemption from taxation of property acquired previously at the marshal's sale; even if such exemption be a franchise, and not a strictly personal right, not transferable by the railroad company, or subject to seizure and sale under execution.

The plaintiff in error can therefore claim only by virtue of his purchase at the marshal's sale, under the laws as they existed at the time of his purchase.

IV. The eighty miles purchased by him at that sale is a complete road of itself, and is not connected with any connecting road completed or *in prospectu*, the ownership of which is in him, he having sold all rights beyond Berwicks Bay to the New Orleans, Mobile and Texas Railroad Company.

Record, pp. 60 to 64.

The property thus sold, if the construction had been continued, would have resulted in a new railroad, owned neither by Mr. Morgan nor by the original railroad company. Could the new company have claimed exemption from taxation, because it had built a railroad over the originally contemplated route, and in doing so had used materials, and franchises even, of the Opelousas Railroad Company?

The originally contemplated railroad had ceased as a continuous work. Two or more distinct roads, under wholly independent control, would exist. There could be no conjoint rights or interests. Each road must be considered as a separate thing, and the road of the plaintiff in error a completed railroad. The road of the original company could, as such, never be completed to Texas. The ten years' exemption becomes perpetual.

The defendant in error therefore prays that this writ of error be dismissed, or, in event of jurisdiction being maintained, that the judgment of the State court be affirmed with costs.

J. Q. A. Fellows,
For the State of Louisiana.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~283~~ 66.

HENRY A. GRANT, COLLECTOR OF INTERNAL REVENUE,
PLAINTIFF IN ERROR,

vs.

THE HARTFORD AND NEW HAVEN RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED OCTOBER 3, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 283.

HENRY A. GRANT, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

THE HARTFORD AND NEW HAVEN RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

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3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Connecticut, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between the Hartford and New Haven Railroad Company, a corporation incorporated by the laws of the State of Connecticut, and existing under said laws on the date of the rendition of said judgment, parties plaintiff, and Henry A. Grant, collector of the internal revenue for the first collection-district of the State of Connecticut, party defendant, a manifest error hath happened, to the great damage of said Henry A. Grant, collector as aforesaid, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 18th day of September, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] LOREN P. WALDO, *Clerk.*

4 It being made to appear that this writ of error is prosecuted by direction of the Department of Internal Revenue of the United States, the United States attorney for the district of Connecticut appearing for the above-mentioned Henry A. Grant, under instructions from such Department, the foregoing writ of error is allowed.

N. SHIPMAN,
One of the Judges of the Circuit Court.

5 UNITED STATES OF AMERICA, *ss:*

To the Hartford and New Haven Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Connecticut, wherein Henry A. Grant, collector of internal revenue, is the plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done in that behalf to the parties.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 18th day of September, in the year of our Lord one thousand eight hundred and seventy-four.

N. SHIPMAN,
One of the Judges of the Circuit Court of the United States for the District of Connecticut.

6 HARTFORD, CONN., *Sept. 30th*, 1874.

Due & legal service of the within citation is hereby admitted.
HARTFORD & NEW HAVEN RAILROAD COMPANY,
By HENRY C. ROBINSON,
Their Attorney.

The return of the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, to the forgoing writ.

The record and proceedings whereof mention is therein made follow, in these words, viz:

Be it remembered that on the 24th day of December, A. D. 1869, there was returned to this court a writ of certiorari, with application therefor and return thereon, in the words and figures following:

7 *Petition for writ of certiorari.—Filed Dec.* 13, 1869.

To the hon. circuit court of the United States of America, second circuit, district of Connecticut:

The petition of Henry A. Grant, of the town of Enfield, in said district, respectfully & humbly sheweth that on the 15th day of February, A. D. 1868, he was, and for a long time prior thereto had been, collector of the internal revenue of the United States for the first collection-district of Connecticut; that, as such collector of said internal revenue, he had placed in his hands a certain assessment or tax against the Hartford & New Haven Railroad Company, a corporation located at Hartford, in said 1st collection-district of Connecticut, the said assessment or tax being made under & by virtue of the provisions of the acts of Congress of the United States, and especially by virtue of the provisions of the 122 section of the act of June 30, 1864, and the several acts amendatory thereof, and said collector collected said assessment or tax on or about the day of , the same being paid to him
8 by said railroad company under protest, amounting to the sum of dollars, which he paid over into the Treasury of the United States; that after payment was so made, to wit, on the 15th day of February, A. D. 1868, & said Hartford & New Haven Railroad Co. brought their action of assumpsit against your petitioner, demanding thirty-five hundred dollars damages, which was duly served on your petitioner, & he was summoned to appear before the superior court, to be holden at Hartford, on the 2d Tuesday of March, A. D. 1868, & said action is now pending in said court against your pet'r, the same being for the purpose of recovering the said sum of money so paid as aforesaid to your pet'r as collector of the internal revenue aforesaid, and your pet'r, before trial of said cause, prays the said action, to wit, The Hartford & New Haven Railroad Co. vs. Henry A. Grant, may be entered on the docket of said circuit court, & that the clerk of said circuit court would issue his writ of certiorari to the said superior court of Hartford
9 County, requiring said court to send to said circuit court the record and proceedings in said cause. And your pet'r, as in duty bound, will ever pray.

Dated Hartford, Dec., 1869.

HENRY A. GRANT,
By H. WILLEY, *His Atty.*

DISTRICT OF CONNECTICUT, *ss:*

HARTFORD, *Dec.*, 1869.

Personally appeared Hiram Willey, attorney for Henry A. Grant, the deft. in the case of The Hartford & New Haven Railroad Co. vs. Henry A. Grant, now pending in the superior court of Hartford County,

Conn., & made solemn oath that the allegations in said petition are true. Before me.

LOREN P. WALDO,
Clerk of the U. S. Circuit Court.

I, Hiram Willey, counsellor at law of the courts of the State of Connecticut, and also attorney of the United States for the district of Connecticut, and counsellor for the petitioner, do certify that I have examined the proceedings against him & have carefully inquired into all the matters set forth in said petition, & I verily believe the same are true.

HIRAM WILLEY,
U. S. Dist. Atty.

10 *Writ of certiorari.*

The President of the United States of America to the superior court of the State of Connecticut, to be holden at Hartford, within & for the county of Hartford, in the State of Connecticut, on the third Tuesday in December, A. D. 1869, greeting:

(SEAL OF CIR-)
(CUIT COURT.)

Being informed that there is now pending before you a suit in which the Hartford & New Haven Railroad Co., a corporation duly constituted & having an office & place of business in Hartford aforesaid, is plff., & Henry A. Grant, of the town of Enfield, in said Hartford County, is deft., which suit was commenced in said superior court against the said Henry Grant for & on account of acts done by him under the revenue laws of the United States; that said suit was commenced by summons & complaint, & that said suit has not been tried, and we being willing, for certain reasons, that the said cause & the records & proceedings therein should be certified by the said court & removed into our circuit court of the United States in & for the district of Connecticut, do
11 hereby command you that you send, without delay, to the said circuit court as aforesaid, the records & proceedings in said cause, so that said circuit court may act therein as of right & according to law ought to be done.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at Hartford, in the district of Connecticut, this 18th day of December, A. D. 1869.

LOREN P. WALDO, *Clerk.*

Officer's return of service of writ of certiorari.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

HARTFORD, *December* 24, 1869.

Then I placed in the hands of Chancey Howard, esqr., clerk of the superior court for the State of Connecticut, within & for Hartford County, a copy of the within application & writ of certiorari, certified to be true copies, by Loren P. Waldo, clerk of the U. S. circuit court for said district of Connecticut.

Attest:

PETER P. CAELL, *Marshal*,
By WASTELL RUSSELL,
U. S. Deputy Marshal.

12 *Record from superior ct.—Writ.*

To the sheriff of the county of Hartford, his deputy, or either of the constables of the town of Enfield, within said county, greeting:

By authority of the State of Connecticut, you are hereby commanded

to attach, to the value of four thousand dollars, the goods or estate of Henry A. Grant, (United States internal-revenue collector,) of said Enfield, and him summon to appear before the superior court to be holden at Hartford, within & for the county of Hartford, on the second Tuesday of March, A. D. 1868, then & there to answer unto the Hartford & New Haven Railroad Co., a corporation located at Hartford, in said county, in a plea of the case, whereupon the plffs. declare & say that the deft., on the 15th day of February, A. D. 1868, promised the plffs. to pay to them, for value received, the sum of thirty-five hundred dollars.

And the plffs. further say that the deft., on the 15th day of February,
A. D. 1868, was indebted to the plffs. in the further sum of thirty-
13 five hundred dollars, for so much money before that time had &
received by the deft. to & for the use of the plffs.

And also in the further sum of thirty-five hundred dollars, for so much money before that time paid, laid out, & expended by the plffs. for the deft., at the special instance & request of the deft.

And also in the further sum of thirty-five hundred dollars, for so much money before that time lent & advanced to the deft. by the plffs. at the special instance & request of the deft.

And also in the further sum of thirty-five dollars, for goods, wares, & merchandise, before that time sold & delivered to the deft. by the plffs., at the special instance & request of the deft.

And also in the further sum of thirty-five hundred dollars, for so much money found to be due from the deft. to the plffs., upon an account then & there stated between them.

And also in the further sum of thirty-five hundred dollars, for work &
labor done & performed by the plffs. for the deft., at the special
14 instance & request of the deft.; & being so indebted, the deft.
afterwards, to wit, on the day & year last aforesaid, at Hartford aforesaid, in consideration thereof, undertook & faithfully promised the plff. to pay to them said several sums of money, when he should be thereto afterwards requested.

Yet the plffs. say that the deft., his said several promises aforesaid not regarding, has never performed the same, though often requested & demanded, all of which is to the damage of the plff. the sum of thirty-five hundred dollars.

And for the recovery thereof, with just costs, the plffs. brings this suit,

W. P. Burrall is recognized in the sufficient sum of $100 to prosecute, &c.

Hereof fail not, but of this writ *but of this writ*, with your doings thereon, make due and return according to law.

Dated at Hartford the 15th day of February, A. D. 1868.

HENRY C. ROBINSON,
Justice of the Peace.

15 *Officer's return of service.*

HARTFORD COUNTY, *ss:*

HARTFORD, *Feb. 18th*, 1868.

Then I left a true and attested copy of this writ with the within-named deft., and read the same in his hearing.

Attest:

WASTELL RUSSELL,
Sheriff of Hartford Co.

Fees: 2 m. travel, 20; copy, 50; sums., 12—82.

Authentication.

STATE of CONNECTICUT,
County of Hartford, ss:

CLERK'S OFFICE SUPERIOR COURT.

HARTFORD & NEW HAVEN RAILROAD CO.
vs.
HENRY A. GRANT.

The foregoing is a true copy of the original writ, & of the officer's return thereon, & I further certify that said cause was brought to said superior court, at its March term, A. D. 1868, & came by true & legal continuance to the December term, A. D. 1869, thereof, at which term last mentioned no other proceedings having been had in relation thereto, it was removed upon a writ of certiorari to the United States circuit court for the district of Connecticut.

16

In testimony whereof I do hereunto subscribe my name & affix the seal of said superior court this 4th day of June, A. D. 1870.

SEAL OF SUPERIOR COURT.

CHAUNCEY HOWARD,
Clerk of Supr. Court.

And said writ and record being duly entered in the docket of this court at its term held in the city of New Haven, within and for the district of Connecticut, on the fourth Tuesday of April, A. D. 1870, the plaintiff, by H. C. Robinson, esq., duly appeared, and the defendant also, by Calvin G. Child, esq., United States district attorney for said district, duly appeared, and the cause was duly continued from term to term, and the parties appear as aforesaid until the present term of court, when the plaintiffs, by Messrs. Hubbard & Robinson, duly appeared, and the defendant, by Calvin G. Child, esq., district attorney as aforesaid, duly appeared and filed their stipulation as to the facts, and their stipulation as to trial, in the words and figures following, viz:

17

UNITED STATES OF AMERICA,
District of Connecticut, ss:

Circuit court, September term, 1871.

HARTFORD & NEW HAVEN R. R. CO.
v.
H. A. GRANT.
No. 76. Action of assumpsit, &c.

In this case it is stipulated by the parties that the issue may be found by the court without the intervention of a jury, and a trial of said issue by a jury is hereby waived by said parties respectively.

Dated at Hartford, in court, this 8th day of December, 1871.

HUBBARD & ROBINSON,
Attys. for Plff.
C. G. CHILD, *Atty. for Deft.*

18

Facts agreed.

U. S. circuit court.

HARTFORD AND NEW HAVEN RAILROAD COMPANY
vs.
H. A. GRANT.

In the case of Hartford and New Haven Railroad Company against

Grant, U. S. collector, to recover money paid under threat of restraint upon a special assessment made by the assessor for the 1st district of Connecticut, in January, 1868.

This special assessment was made under the claim made by the assessor, that expenditures made by the company in the two years ending 3rd of August, 1867, in the construction of a stone bridge across the Farmington River at Windsor, and charged by the company as repairs, were to be treated as "profits used in construction," and liable to assessment under the law.

The bridge constructed over the Farmington River at the point in question, at the time of the building of the road, was a covered wooden bridge on stone piers and abutments. This bridge was burned by
19 sparks from a locomotive a few years later. The next bridge was of wood on the same foundation. In 1854 an unusual freshet in the Farmington River greatly endangered the bridge then in use, the water rising against the floor and upper side of the bridge, and only by the active exertions of the officers of the company and a large force of men it was saved from destruction. A highway-bridge, belonging to the town of Windsor, crossing the same river a few hundred feet below, was carried off, and a suit was commenced by the town against the railroad company to recover damages for the destruction of the town bridge, on the ground that the railroad company had so narrowed the water-way of the river by its enbankments and abutments as to send the current with increased velocity and volume against the town bridge and thus cause its destruction. This suit was tried there several times in a series of years, resulting in a failure each time of the jury to find a verdict, and was then settled by compromise.

In 1864 it became apparent, with good reason therefor, to said company that the bridge in question must soon be rebuilt or replaced
20 by some other structure. It was temporarily strengthened by attaching wooden arches to each of its chords, and the subject of constructing some other structure to take its place was carefully considered by the officers of the company, and in view of the danger of destruction of a wooden structure by fire, of the necessity of additional water-way, demonstrated by the experience of previous years, of the great loss to the company and inconvenience to the public which would result from the destruction of the bridge from any cause, a loss to the company which would have exceeded the entire cost of the present bridge, it was determined to commence and proceed gradually with the construction of a bridge composed of continuous stone arches.

The construction of this bridge commenced in the early part of 1866. The fiscal year of the company, until the present year, has terminated with the 31st day of August in each year. The expenditures on this bridge, up to the 31st day of August, 1866, amounted to $31,269.65, and were charged to the current expenses of repairs of road and bridges.

21 During the year ending August 31st, 1867, the expenditures on the bridge were $24,442.95, and were charged to the same account.

During the year ending 31st August, 1868, the bridge was completed by an additional expenditure of $23,204.95, which was charged to the same account.

The bridge consists of a series of seven stone arches, each of fifty-four feet clear span, thus affording a water-way for the river of 378 feet, while the bridge for which it was substituted gave only a water-way of 290 feet.

It has been the practice of the company, for a great number of years, to include in one and the same account all expenditures for repairs of road and tracks and bridges, and at the close of each year to charge to this one account of "Repairs of road and bridges" all such expenditures for repairs or renewals of road, tracks, and bridges as seemed proper for keeping the road and structures in a condition to be safe for the use of the public and economical for the company.

22 The total expenditures of the company, charged in this account for the year ending August 31st, 1867, amounted to $255,780.32, while for the preceding year, ending August 31st, 1866, they were 297,885.93, and for the following year, ending August 31st, 1868, they were 326,427.99.

The total income of the road for the year ending August 31st, 1867, was 1,685,334.59. The total expenditure for the same term, for repairs of track, bridges, and equipments, including renewals of bridges, equipments, and structures, and all other current and incidental charges for operating the road, except State and national taxes, was $982,518.90, equivalent to 59 per cent. of the gross earnings, and not more than a proper percentage of gross receipts to cover all proper ordinary current expenses and depreciation of the entire property; nor was the percentage of expenses to gross receipts in 1866 any more than a proper one to cover such expenses and such depreciation.

23 The company paid an United States tax of 5 per cent. on all dividends paid to its stockholders from its profits during its fiscal year ending August 31st, 1867, and also, after closing its accounts and ascertaining its profits for that year, upon the further sum of $123,996.89, being the entire balance of its profits after payment of dividends, which sum was carried to the credit of its contingent fund; and the company paid also, on the 10th day of January, 1867, upon the sum of $104,756.61, for like profits over dividends, for the year ending August 31st, 1866.

The expenditures on the new bridge in 1866 were at the rate of about $2,000 per month.

The value of the materials in the old bridge, when taken down, was $1,500, being the price which company realized.

The cost of putting up a new bridge just like the old one at the time of erecting the stone bridge would have been $15,000; but the company were assessed upon entire expense, without credit for value of bridge equivalent to the old one.

24 The July dividend in 1866 was duly returned and assessed upon the company by the department, and collected of the company on the 7th day of August, A. D. 1866.

The assessment upon which the amount in suit was collected was made on the 13th day of January, 1868, as per the annexed, the same being the only re-assessment of which the company was apprised, and the form of their notification.

(65.)

UNITED STATES INTERNAL REVENUE.

Return by banks, trust-companies, savings-institutions, insurance, railroad, canal, and turnpike companies of dividends declared and paid or payable. (Sections 120–122 act of June 30, 1864, as amended July 13th, 1866.) To be made to the assistant assessor on or before the 10th day of the month following that in which any dividends are de

25 clared or additions made to surplus fund, and the tax to be paid to the collector on or before the last day of the month.

Account of all dividends, in scrip or in money, declared due or paid to stockholders, to policy-holders, or to depositors, by the managers of the Hartford and New Haven Railroad Co. of Hartford, in the county of Hartford and 1st collection-district of Connecticut, with the amount of tax thereon deducted and withheld from the persons to whom said dividends were paid, and of all undivided profits of the said company from the day of , 186 , to the 31st day of August, 1867, liable to a tax under the internal-revenue laws.

26 Capital.	Net gains since prior dividend.	Rate of dividend declared.	Amount of dividend declared.	95 per cent. of dividend, being the whole amount paid stockholders.	5 per cent. of dividend, retained as excise-tax.
$	$	Per cent. and tax	$	$	$
Profit over dividend declared.....$				5 per cent of which is...	$
Total excise-tax, 55,712.60, 5 %.....					
Earnings used in constructing new Windsor bridge.....					$2,785 65
Or amount taken from surplus fund to complete dividend, on which the tax of per cent. has once been paid by the company.				per cent. of which is....	$
Total excise-tax.....					$

(Signed)

I, , do swear that the above account contains, to the best of my knowledge and belief, a true and faithful statement of all dividends declared due or paid by the said , and of the undivided profits thereof, together with the amount of taxes which have accrued thereon, or should accrue, and not accounted for, during the time specified, according to the provisions of law.

(Signed)

Assessment made by me this 13th day of January, 1868.

C. G. MUNYAN,
Assistant Assessor.

27 (Indorsed on back:) (65.) Return of dividends. H., & N. H. R. R. Co. C. G. Munyan, assistant assessor 1st district, 1st division. 1867.

From this assessment the company made an appeal to the Internal Revenue Commissioner, according to law, which appeal was disallowed.

The plaintiffs paid to the defendant, under protest, $3,064. 21 on the 11th day of February, 1868, under duress, the same being five per cent. upon the amount of the above-recited additional assessment and penalty, as evidenced by the following receipt:

28 UNITED STATES INTERNAL REVENUE COLLECTOR'S OFFICE
1st DISTRICT OF CONNECTICUT,
Hartford, Feb. 11th, 1868.

Received of Hartford, New Haven & Springfield Railroad Co. twenty-seven hundred eighty-five $\frac{65}{100}$ dollars for excise-tax on assessments for profits and construction—$2,785.65; and one hundred thirty-nine $\frac{28}{100}$

dollars, being amount of penalty for non-payment within time prescribed by law—139.28; total, 2,924.93, being amount assessed on monthly list for December, 1867.

$2,924.93.

(Signed) H. A. GRANT, *Collector.*

(Written across the face in red ink:) The said railroad company claiming that said tax is illegal and that payment thereof is made by them without other consideration on their part than to avoid destraint and seizing of their goods and chattels.

(Signed) H. A. GRANT, *Collector.*

The defendant was collector of internal revenue for the 1st district of Connecticut at the time of his receipt of the money.

The assessment was at the legal rate of five per cent., and the manner of the same was lawful in form.

HUBBARD & ROBINSON,
Plff's.' Attorneys.
C. G. CHILD, *U. S. Atty.*

And on the 23rd day of April, A. D. 1872, the parties having been fully heard, the court filed its opinion and decision, in the words and figures following, viz:

29 THE HARTFORD & NEW HAVEN RAILroad Company
vs.
H. A. GRANT.

SHIPMAN, J.:

The disputed assessment in this case was made under that portion of the internal-revenue act of June 30th, 1864, which relates to the tax on income. Section 122 of that act (13 U. S. Stat. at Large 284) provides, among other things, that "any railroad, canal, turnpike, canal, navigation, or slack-water company indebted for any money for which bonds or other evidence of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money, due and payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest or coupons, divi-
30 dends or profits, whenever the same shall be payable."

The principal question presented by this controversy for determination is, whether the $55,712.30 expended by the plaintiffs during the fiscal years 1866 and 1867 on this bridge were "profits used for construction," and, therefore, subject to tax. It is obvious, at a glance at the agreed facts, that the whole of that sum was not liable to the tax imposed, whatever may be the fact in regard to the larger part of it. The bridge in question needed to be replaced by a new one. The safety of the travelling public demanded this; and whatever sum was necessary to replace the old and worn-out structure by a new one of the same materials and dimensions would, in no sense, be deemed profits used in construction. An amount necessary to effect this object could not properly be called "profits" for any purpose. The replacing of the old bridge by

such a new one was strictly within the meaning of the word "repairs," and the cost of it was properly chargeable to the ordinary expense-account of the company, and was to be deducted from the gross receipts before any proper balance of profit could be ascertained. It is agreed that
31 the cost of thus replacing the old bridge would have been $15,000. From this sum the value of the material of the old bridge would have to be deducted. It is agreed that they were worth only $1,500. Thus $13,500, which the plaintiffs were clearly entitled to deduct, as a part of their necessary expenses, from their gross earnings, before any profits or income would accrue, was included in the amount upon which the tax was assessed and collected. As well might the assessor have assessed a tax on the wages of the engineers, or on the coal used in driving the engines, as on this sum, which is conceded to have been necessary to keep this bridge in a safe condition for public travel. To the extent, therefore, of $13,500, or rather to the extent of five per cent. on that sum, the tax was improperly levied and its collection was illegal.

But the plaintiffs claim still further that none of the expenditure on this new bridge during the years 1866 and 1867 was "profits used for construction." On the contrary, they insist that though they reconstructed the bridge on a new plan, with an increased water-way,
32 and with different and non-combustible and comparatively indestructible materials, still, as the new structure was simply a bridge for crossing this stream, with no more tracks, or facilities for business or earnings than the old one furnished, the expenditure devoted to this object should be deemed, not profits used for construction, but a part of their current expenses, necessarily devoted to the repair and preservation of their property. But, if this question were to be determined exclusively on the naked facts pertaining to this new structure, as compared with the old one, unaffected by any other consideration, I should hesitate to adopt this view of it. This stone bridge was not only a new structure, but it was a different and much more valuable one, not merely to the public in the way of safety, but to the company as a security against loss by accidents to their trains and loss by fire, to which the former wooden structure was exposed, and to which a new wooden bridge would be equally exposed, and by a great saving in future repairs or renewals, provided against effectually by the solid and permanent materials of which it is composed. In this view of the
33 matter merely, the new bridge was an original and independent improvement of the property of the company, which added to the value of their whole estate beyond what any mere repairs on the old bridge, or the substitution of a new one of similar construction, would have done. It would seem that earnings adequate to pay for such an improvement must be deemed profits. Otherwise a railroad company might, after keeping their tracks and bridges in ordinary repair, such as they have been for twenty years, by a current expenditure for that purpose, devote a part or the whole of their surplus earnings to the erection of stone or iron bridges and stone causeways, and any other more permanent and durable structures, in place of old ones, one after another, and thus increase the value of their entire line of road to the extent of millions, and yet pay no tax on the income by means of which they had been able to accomplish such a result.

But this is not the case presented by the agreed statement of facts submitted. The expenditure on this bridge in 1866 and 1867 was charged by the company in their expense-account for the current years,
34 respectively; and it is expressly agreed that the whole amount expended on the line, including that devoted to this bridge, was

not more than a proper percentage of the gross receipts to cover all proper, ordinary current expenses, and the depreciation of the entire property. Now, a deduction of such a percentage must always be made before the amount of profits can be ascertained; there can be no profits in any just and proper sense until a sum necessary to keep the line in good repair, and protect the whole property from depreciation by wear and time, has been expended or set apart for that purpose. Profits consist of the balance that remains after this is done. The obvious and irresistible inference which follows from the fact agreed to, which I am now considering, is, that whatever sum was expended on this new bridge in 1866 and 1867, beyond what was necessary to repair the old one, or replace it with one similar in materials and dimensions, was withheld from some other part of the line needing repairs, to keep it in its original condition. In other words, a portion of the earnings
35 which might properly have been devoted to the repair and preservation of the whole line of road and its equipment was, during these two years, accumulated, and expended upon this bridge. Withholding proper expenditure from one portion of the line and devoting it o another, where the amount thus expended does not enhance the value of the property as a whole, does not constitute that expenditure profits.

It is a new mode of administering or distributing the outlay of the fund proper to be applied to repairs, a fund that must always be deducted before the question of profits is reached.

Judgment must therefore be entered for the plaintiffs, to recover the whole tax exacted.

And thereupon, it is considered by the court here, this 23rd day of April, A. D. 1872, that the plaintiff do recover of the defendant the sum of three thousand six hundred and sixty-two and $\frac{41}{100}$ dollars damages, and its costs, taxed and allowed at the sum of one hundred and five $\frac{90}{100}$ dollars, and have execution therefor.

Attest:

LOREN P. WALDO, *Clerk.*

36 UNITED STATES OF AMERICA,
District of Connecticut, ss:

I, Loren P. Waldo, clerk of the circuit court of the United States for the district of Connecticut, do certify that the annexed papers are true copies of the original judgment-record *re* in the matter of The Hartford and New Haven R. R. Co. vs. Henry A. Grant, recorded & on file in said court.

In testimony whereof I have set hereto my name officially and the seal of said court, at Hartford, in said district, this 30th day of September, A. D. 1874.

[SEAL.] LOREN P. WALDO, *Clerk.*

(Indorsement on cover:) No. 283. Henry A. Grant, collector of internal revenue, plaintiff in error, vs. The Hartford and New Haven Railroad Company. Connecticut C. C. U. S. Filed 3rd October, 1874.

CITY OF CAIRO.

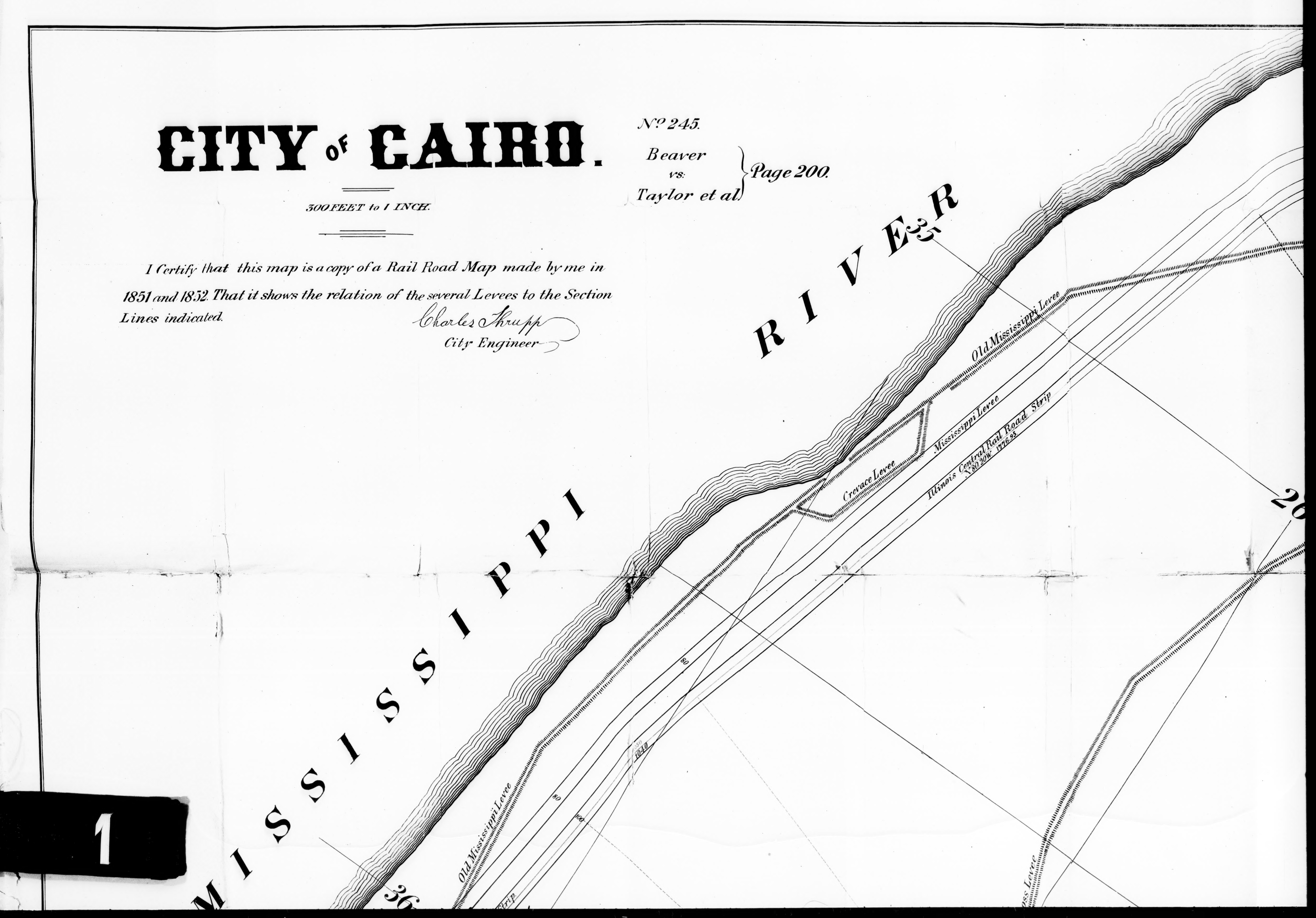
300 FEET to 1 INCH.

I Certify that this map is a copy of a Rail Road Map made by me in 1851 and 1852. That it shows the relation of the several Levees to the Section Lines indicated.

Charles Shrupp
City Engineer

No 245.

Beaver
vs.
Taylor et al } Page 200.



1

al } Page 200.

"B"

RIVER

27

Old Mississippi Levee

Mississippi Levee

Illinois Central Rail Road Strip
N 80 20W 1278.93

Levee

Old Cross Levee

26

Old Cross Levee

I. C. R. R.
Depot Ground

Mississippi Levee

Illinois Central Rail Road Strip
N 8 0 W 3291

1

1196 Rds 650 Levee

1196 Rds 300 Levee

"B"

27

26

Old Cross Levee

I. C. R. R.
Depot Ground

Mississippi Levee

Illinois Central Rail Road Strip
N 8 0 W 3291

N 61 50 E 1917 80

1450

1196 Lks 300 Curve

1196 Lks 650 Curve

1196 Lks

3765 316 35

500

500

8901

1 x 13 100526 Ft Rds.

1

1

MISSISSI

36

Old Mississippi Levee

Illinois Central Rail Road Strip

Old Gross Levee

80

100

1040

Mississippi Levee

Stone

500 Rds. 1624

Illinois Central Rail Road Strip

38.43

450

I. C. R. R.

Passenger

Depot

Ohio Levee

450

Ohio Levee

100

80

960

Stone

I. C. R. R.

Freight Depot

960

1655.02

1656

Stones

80

OHIO RIVER

5730 Rds. 100 Curve

80

Old Cross Levee

960

Stone

I. C. R. R.
Freight Depot

960

Central Rail Road Strip
3843

Ohio Levee

12
21

1658.42
1656

Stones

100

80

Illinois Central Rail Road Strip
N. 32° 10' W. 50.32 3407

Ohio Levee

80

100

1146 Rds. 500 Curve

795.8

450

442.50 395.04

1579.04

Ohio Levee

80 200

500
500

3730 Rds. 100 Curve

825

S.

W.

E.

N.

OHIO RIVER

OHIO RIVER

23

1146 Rds. 300 Curve

63°35

I.C.R.R.

Two

Old Station

400

500

500

1000 Feet

400

400

95°52'

1146 Rds. 500 Curve

N. 61506 1917 80

1450

Stone marked B.

3765 3435

1196 Rds 650 Curve

1196 Rds 300 Curve

1196 Pds

1214

N. 31 E. 9285 2300

1146 Rds. 500 Curve

1570 04

1958

450

395.08

442.50

200

100

80

500

500

23

Illinois Central Rail Road Strip

N. 32 (illegible) 52 9407

Ohio Levee

OHIO RIVER

Ohio Levee

Stones

N.

E.

S.

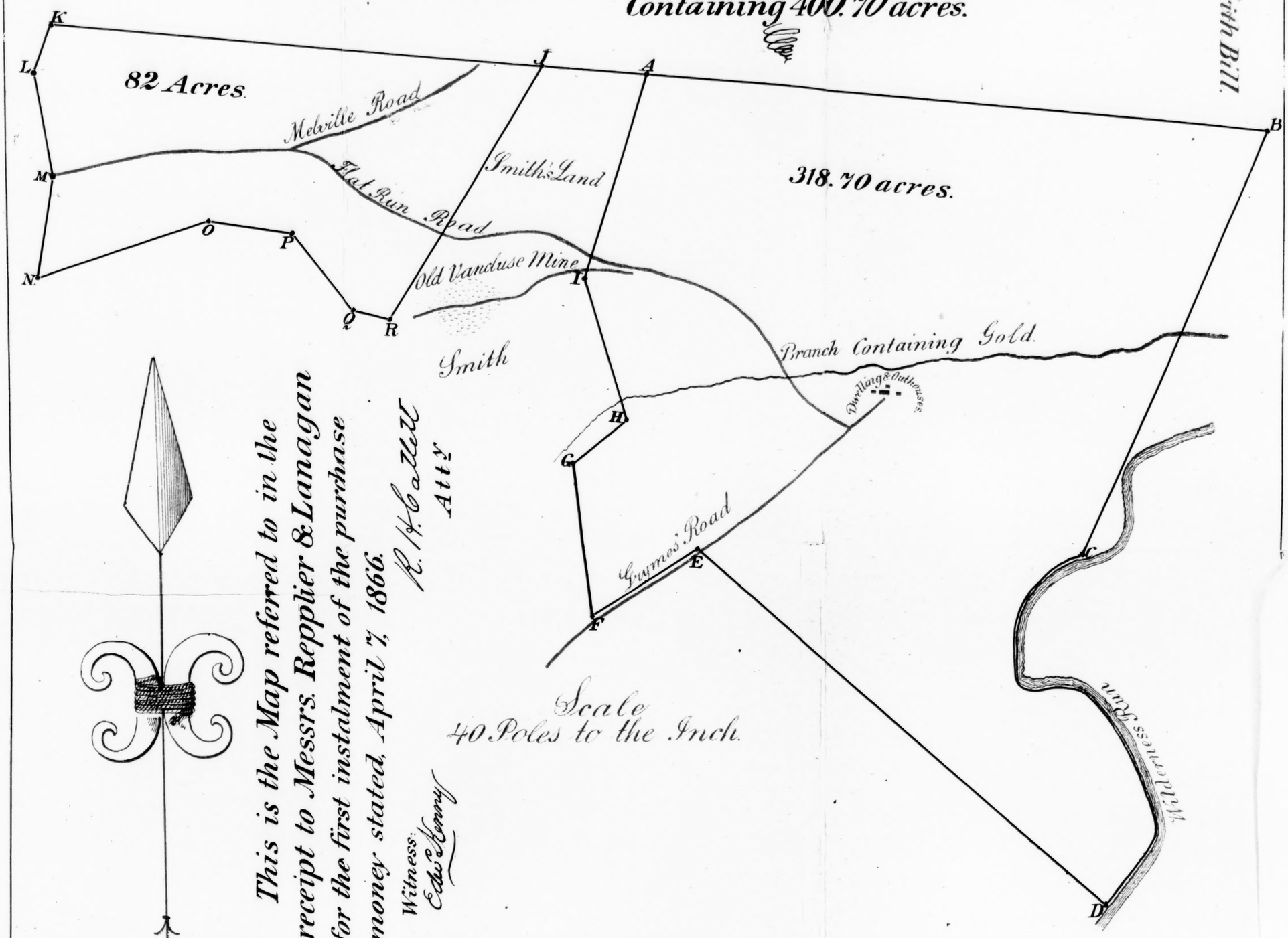
1025

Nº 419.

Grymes
vs:
Repplier & Lanigan. } Page 19.

MAP
of
Vancluse Farm,
Orange County, Virginia.
Containing 400.70 acres.

Exhibit "B" with Bill.



Scale
40 Poles to the Inch.

This is the Map referred to in the receipt to Messrs. Repplier & Lanigan for the first instalment of the purchase money stated, April 7, 1866.

Witness:
Chas. Conway

R. M. Gazzett
Atty

Courses & Distances.

A-B.	S. 84½° E.	244 Poles.	J-K.	N. 84½° W.	189 Poles
B-C.	S. 25¾° W.	177 "	K-L.	S. 21° W.	18 "
C-D.	Course of Run		L-M.	S. 8° E.	39 "
D-E.	N. 53½° W.	211 "	M-N.	S. 10½° W.	38 "
E-F.	S. 57½° W.	48 "	N-O.	N. 74° E.	68½ "
F-G.	N. 6½° W.	59 "	O-P.	S. 80° E.	33½ "
G-H.	N. 53° E.	26 "	P-Q.	S. 37° E.	37½ "
H-I.	N. 16¼° W.	56 "	Q-R.	S. 75° E.	15 "
I-A.	N. 20¾° E.	78 "			

Made Augst 25th 1865.
For Dr. Peyton Grymes.
By C. Wm Fry

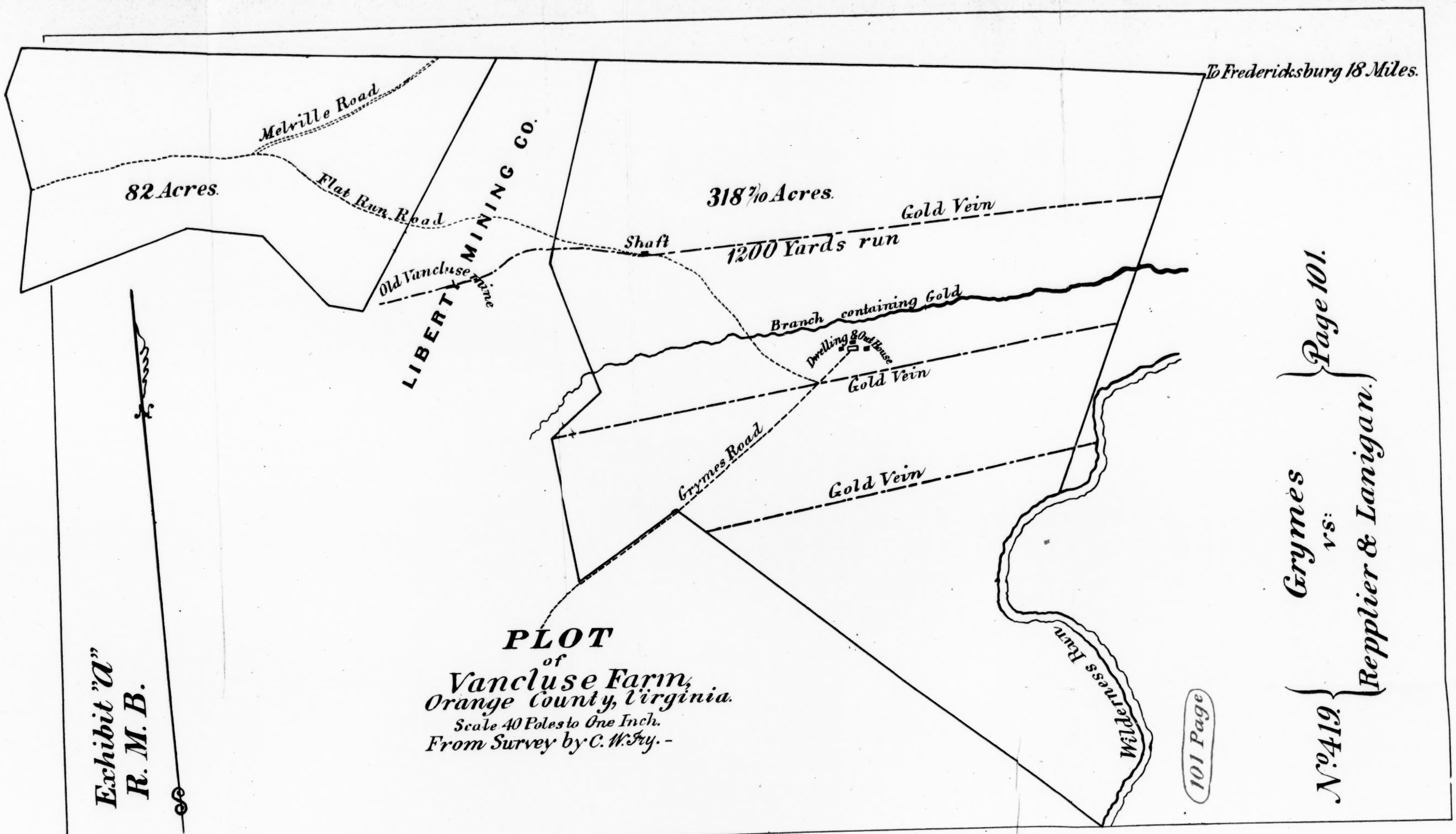

To Fredericksburg 18 Miles.
Melville Road
82 Acres.
Flat Run Road
LIBERTY MINING CO.
318 7/10 Acres.
Gold Vein
Shaft
1200 Yards run
Old Vancluse mine
Branch containing Gold
Dwelling & Out House
Gold Vein
Grymes Road
Gold Vein
Wilderness Run
PLOT
of
Vancluse Farm,
Orange County, Virginia.
Scale 40 Poles to One Inch.
From Survey by C. W. Fry. -
Exhibit "A"
R. M. B.
Page 101.
Grymes
vs:
Repplier & Lamigan.
No. 419
101 Page

Exhibit "B"

No 7 { Peyton Grymes appt. / Geo. S. Repplier & al.

Map

of the Vaucluse Farm in

ORANGE COUNTY VIRGINIA

Purchased by Messrs. Repplier & Lanigan

Containing 417.862 Acres,

From Surveys, by Jed. Hotchkiss, Top. Eng.

Staunton Va.

Dec. 1867.

Dead Forked Red Oak

~~Boundary of~~ 83.998 Acres of Timber Land Sold to Messrs Repplier & Lanigan by Dr. Peyton Grymes April 7th 1866

Right of Way reserved

~~Boundary of~~ 333.846 Acres of GOLD MINING LAND Sold to Messrs. Repplier & Lanigan by Dr. Peyton Grymes. April 7th 1866

~~This represents the Boundary of~~ 200 Acres, sold to the Liberty Mining Company Oct 1st 1852 by Dr. Peyton Grymes, Oct 1st

~~This represents the Boundary of~~ 200 Acres, sold to Wm. K. Smith by Dr. Peyton Grymes Aug 18th 1853 known as the "Vaucluse or Grymes Gold Mine"

Scale. One Mile

1 2 3 4 5 6 7 8 9 10 20 30 40 50 60 70 80 Chains

MELVILLE RD.

OLD SPOTSWOOD ROAD

THE RIVER ROAD

FLAT RUN RD.

THE POLE ROAD

To the Rapid Ann

To Melville Mine

To Flank Road

To Fredericksburg

To the Rapid Ann River

Stake & Oak Pointers

Opening

The Red Oak Ridge

Grymes' Run

Vaucluse Run

Vaucluse Spring

MANAGER'S HOUSE

VAUCLUSE MANSION

BARN

Diamond Run

Liberty Mining Company

GRYMES

THE

ROAD

Wilderness Run

New Road opened by Vaucluse Co.

The Gold Deposit

Opening

To Flank Road

No. 40874
Zenas Wheeler

Fig. 1.

Imp.d Gold & Silver Amalgamator

No. 236. Birdsall & al vs. Coolidge } Page: 18.

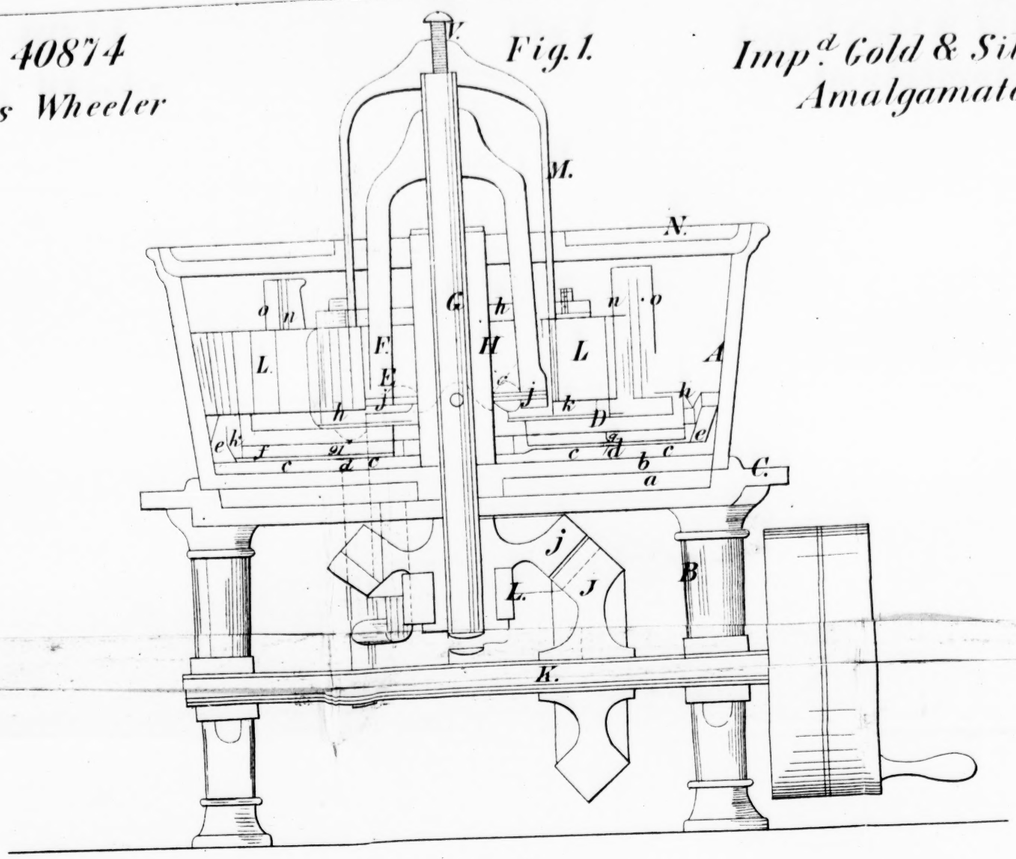


Fig 2.

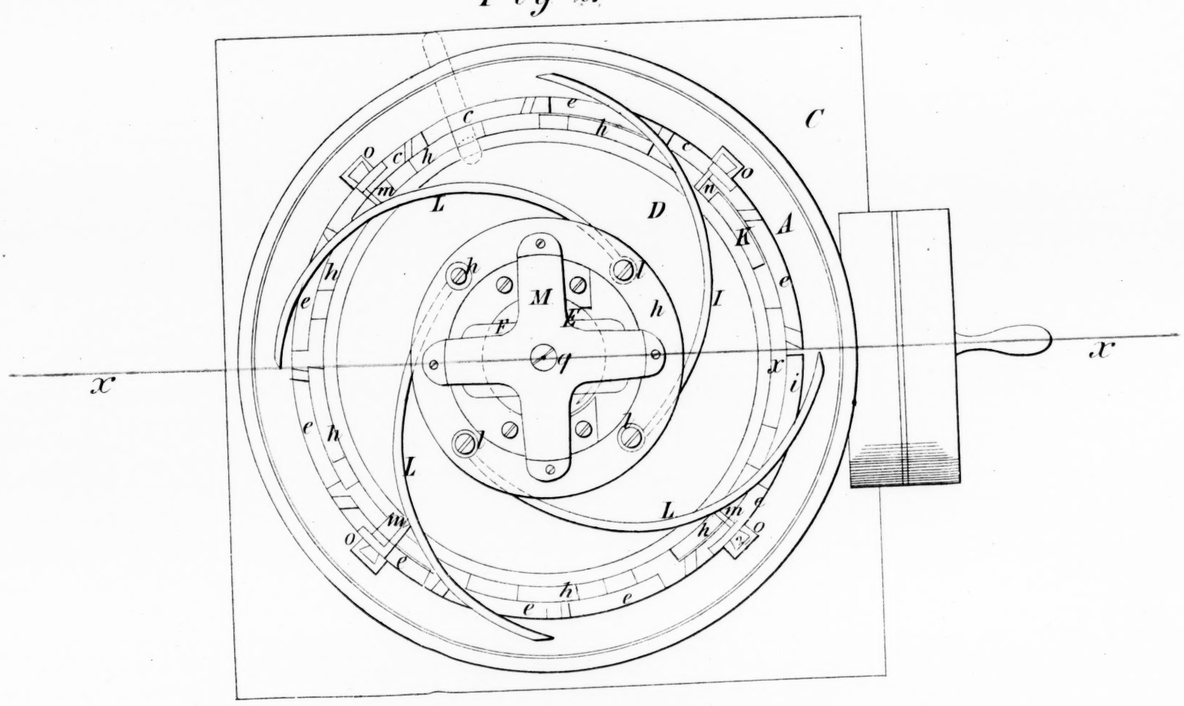


Fig. 3.

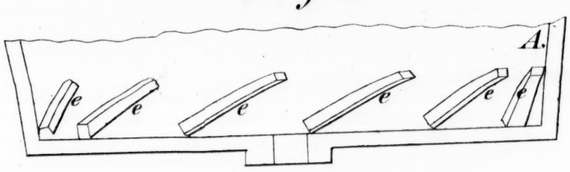
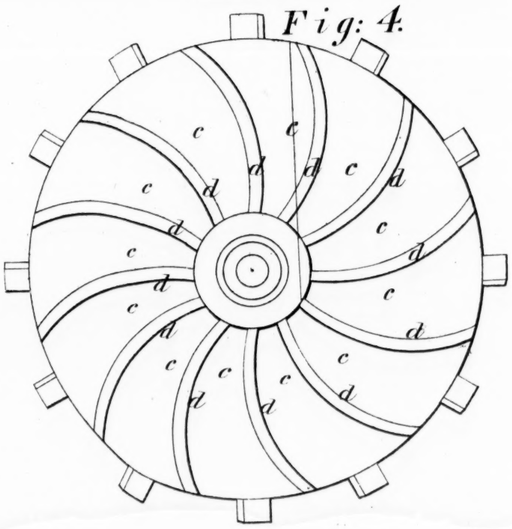


Fig: 4.



Witnesses:
J. W. Coouch.
G. W. Reck.

Correctly attached:
Edward Bebb
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U.S. Patent Office.

Inventor:
Zenas Wheeler
per Munn & Co
Attorneys.

No. 40874

Zenas Wheeler

Fig. 1.

Impd Gold & Silver Amalgamator

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vs.
Coolidge

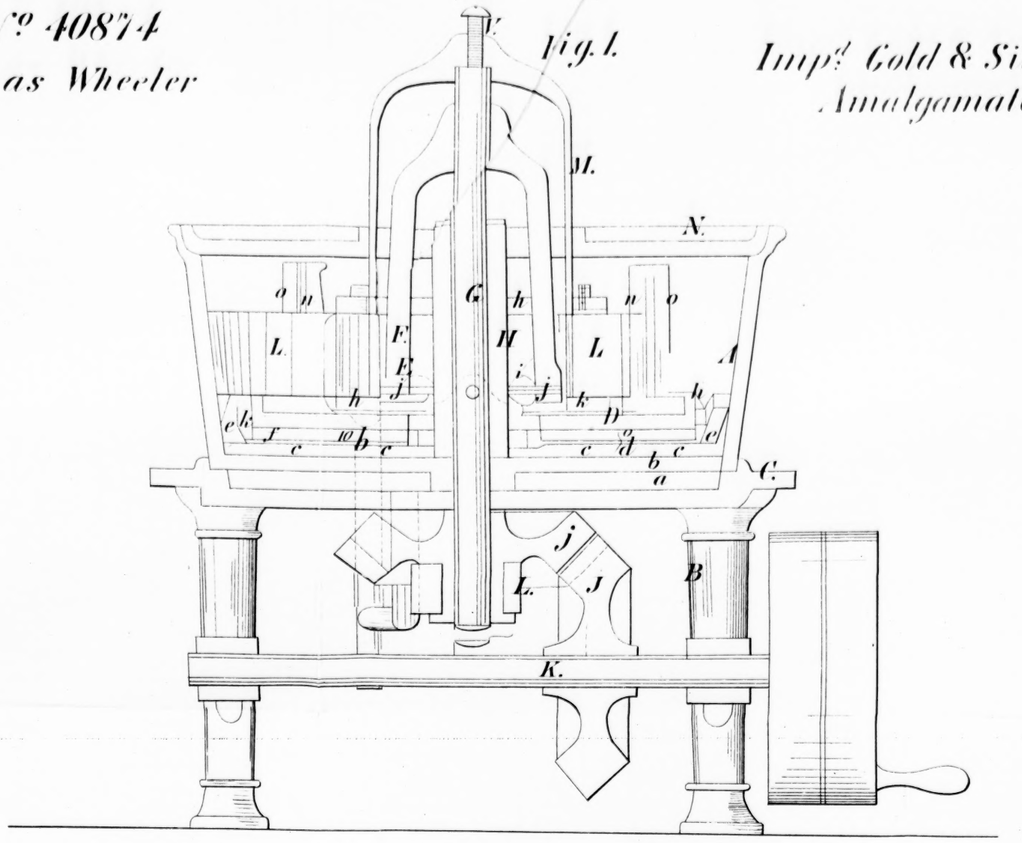


Fig 2.

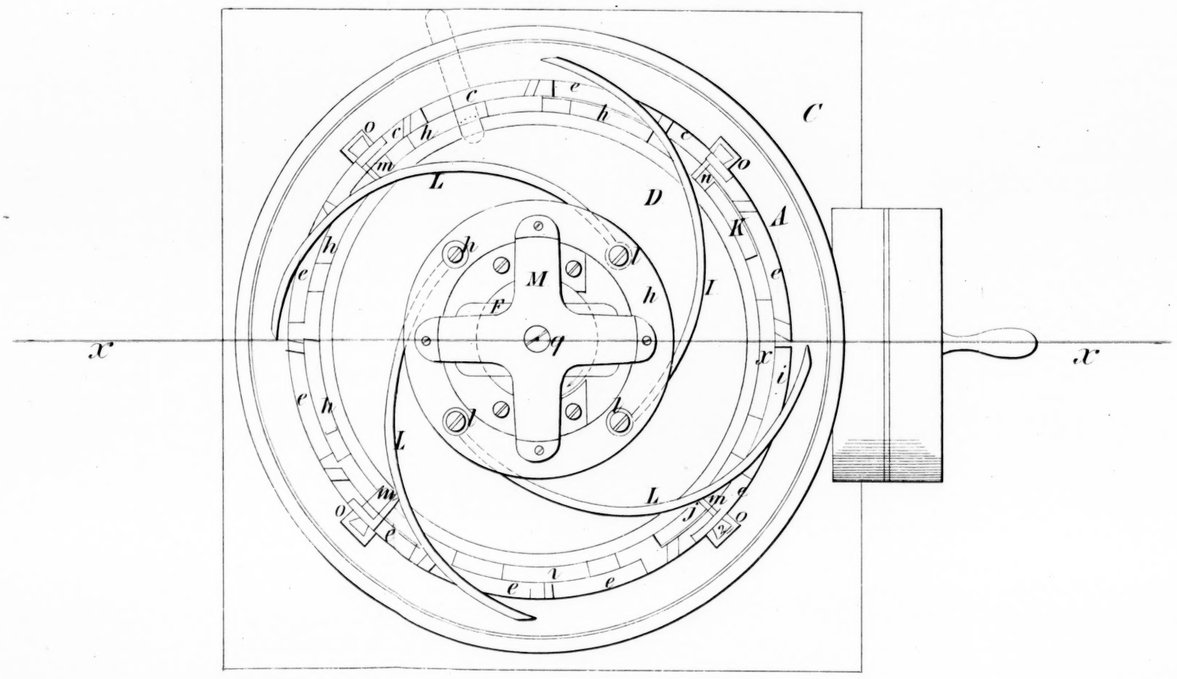
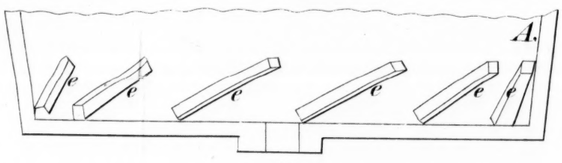


Fig. 3.



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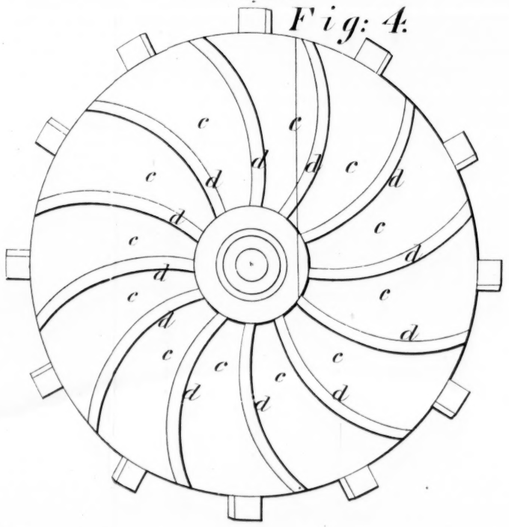

Witnesses:
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G. W. Reck.

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T. Varney.

Amalgamator for Gold and Silver.

Patented Dec. 16, 1862.

No. 37185.

Fig. 1.

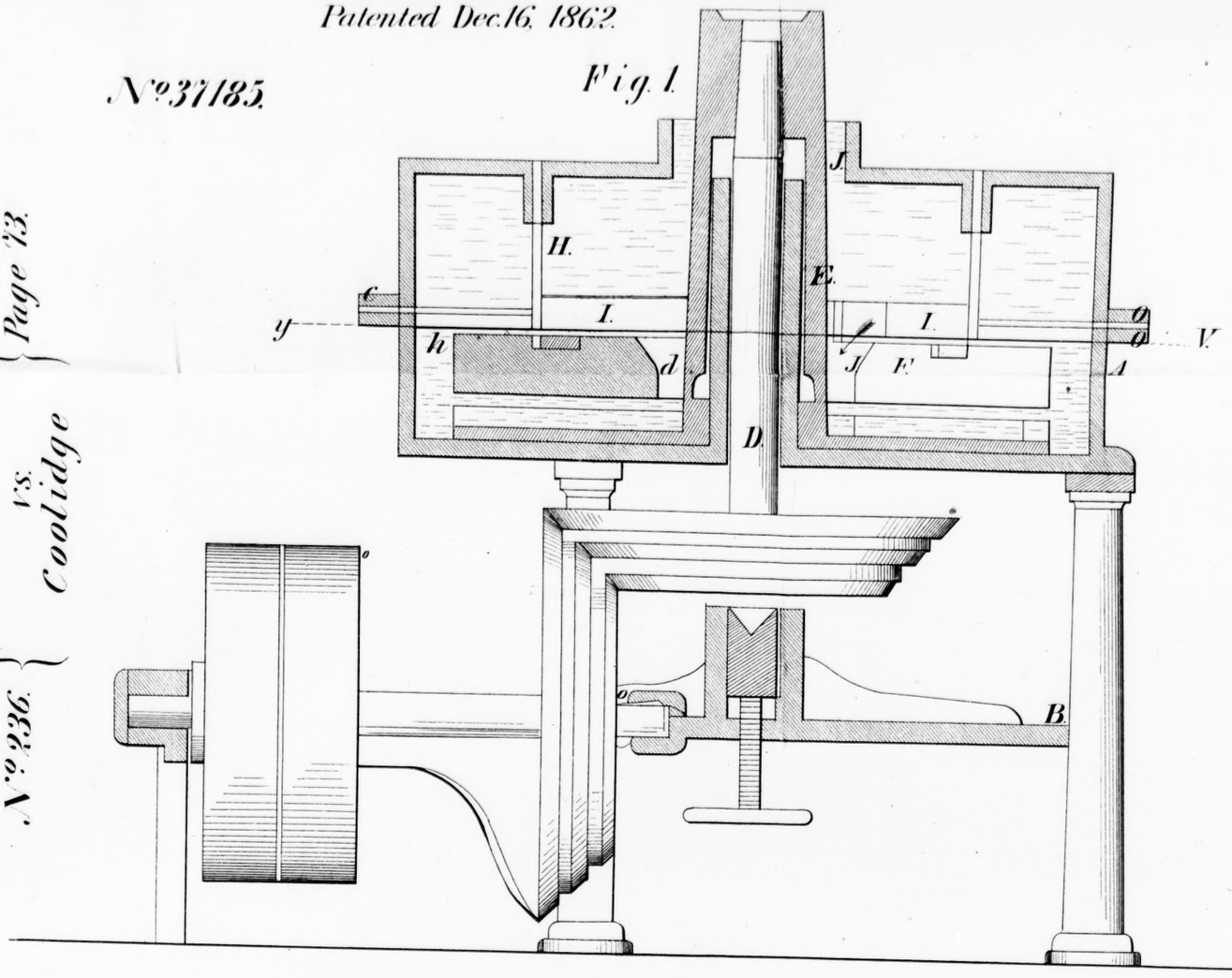

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Fig. 2.

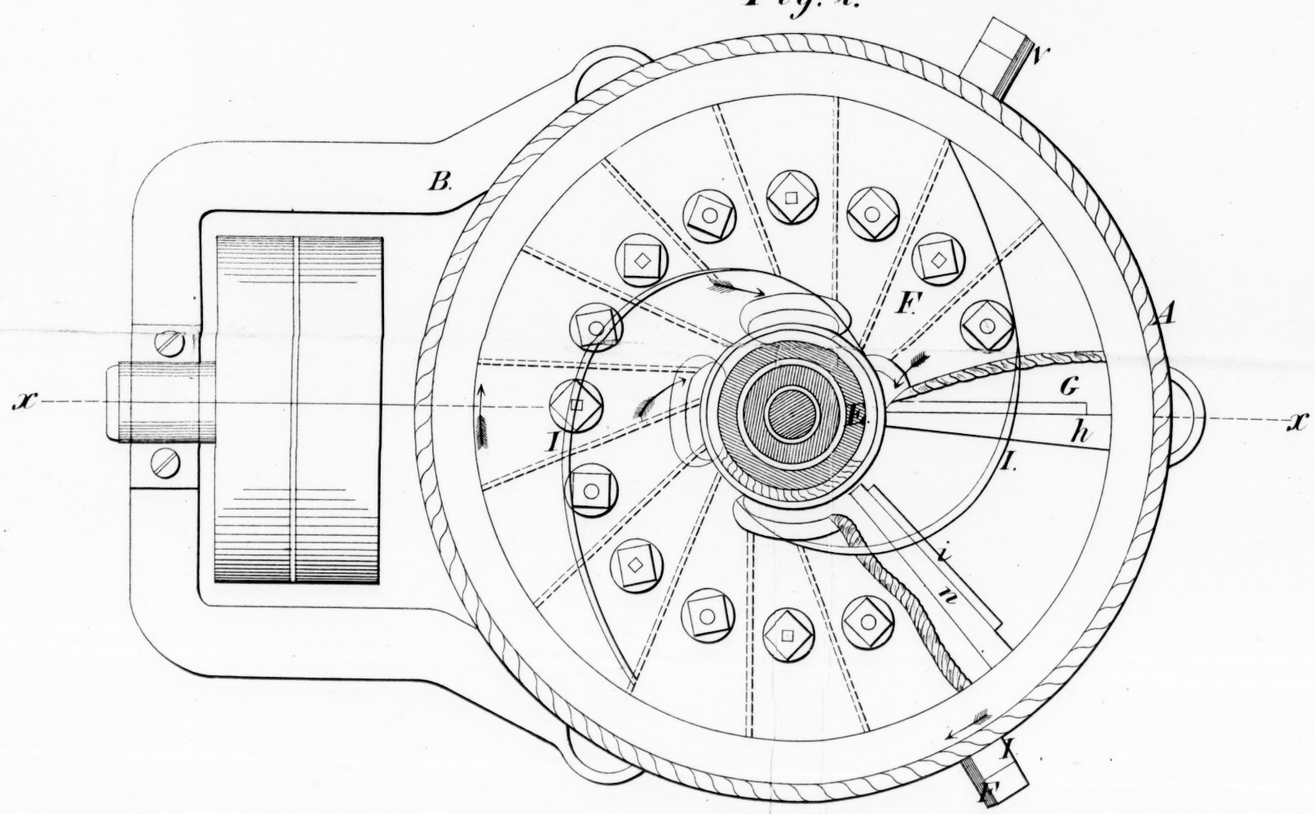

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Fig. 3.

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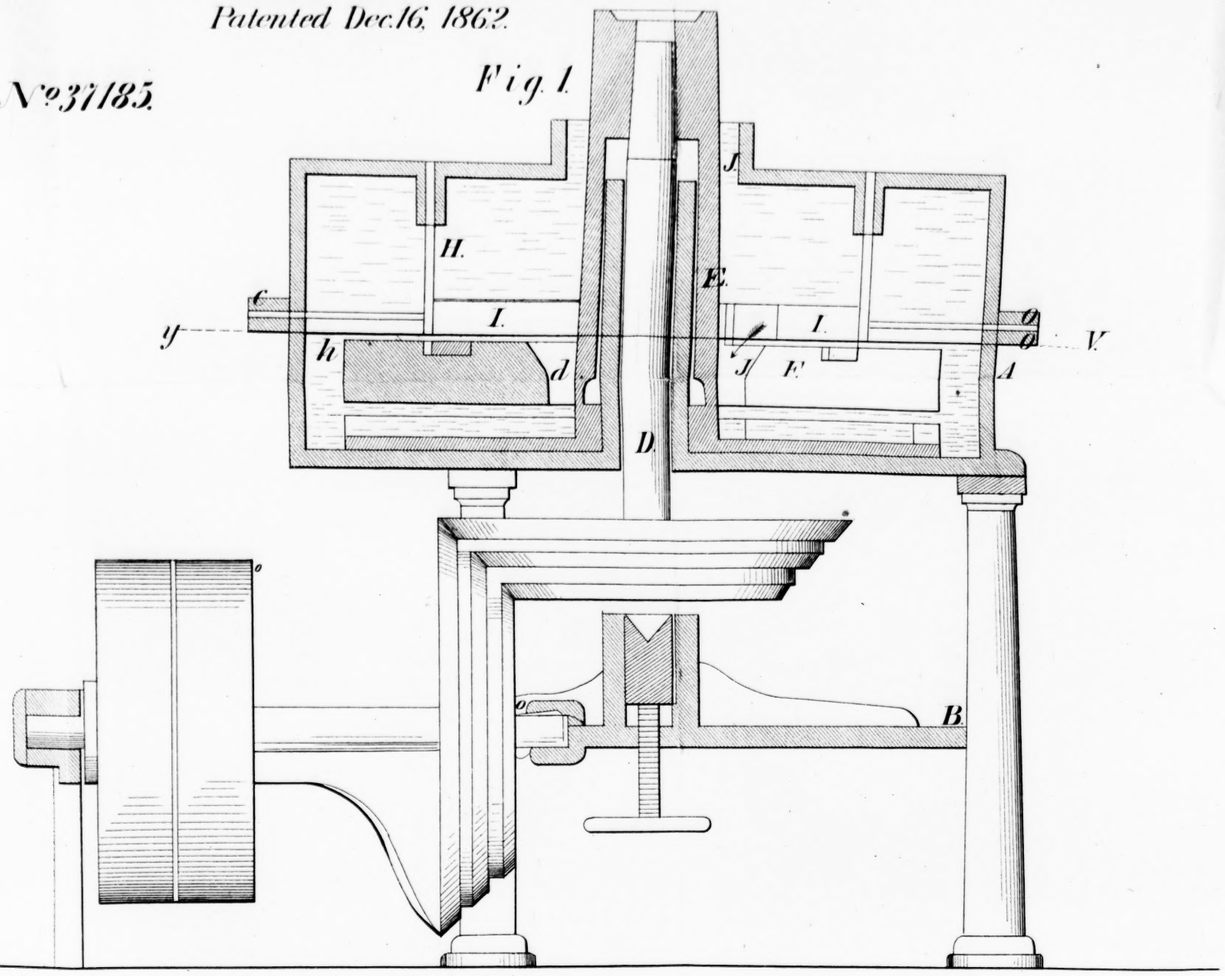

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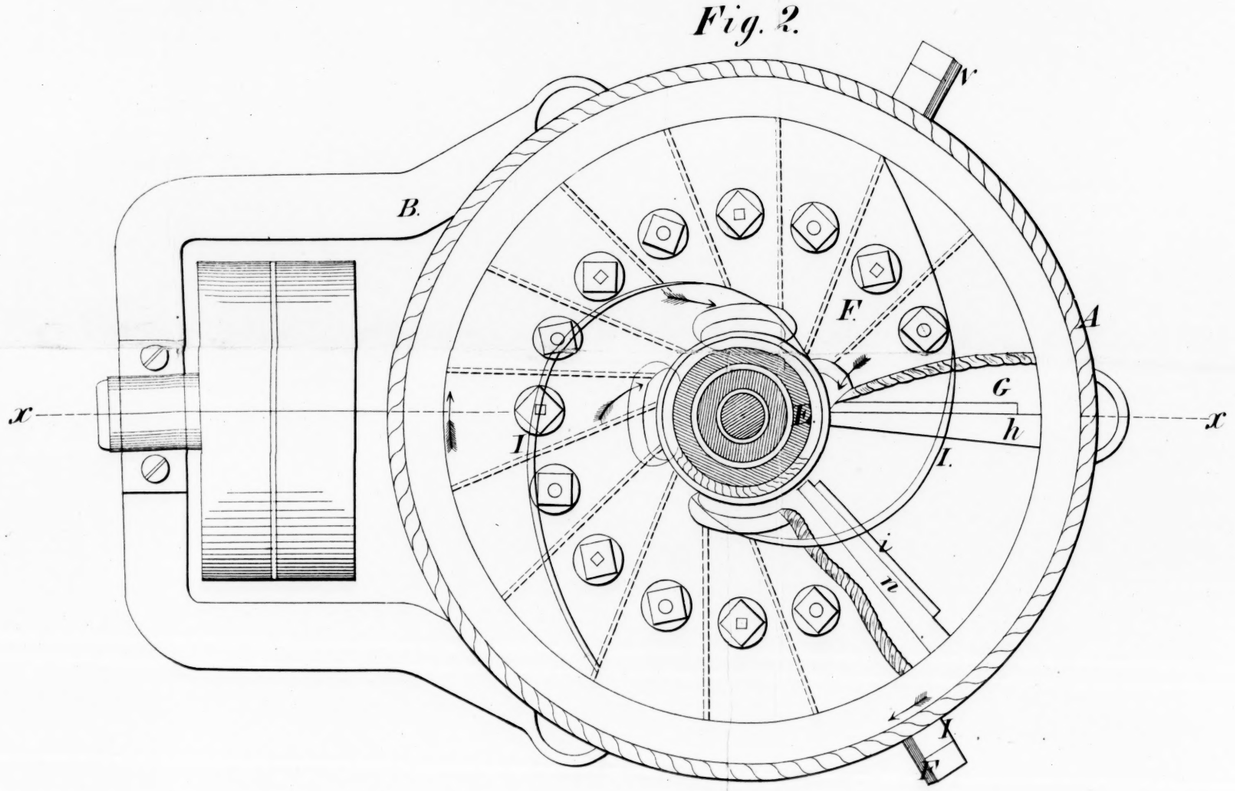
Fig. 2.



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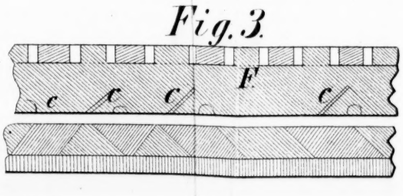

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